# THE CONSTITUTION AND GOVERNMENT OF TEXAS

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# PREFACE TO THE FIRST EDITION

An act of the Texas Legislature places upon the educational institutions of the State the duty of offering a course of instruction in the Constitutions of the United States and of Texas. Interest in the consideration of these documents, therefore, has been revived. Excellent treatises dealing with the Federal Constitution are available, but a usable college text treating specifically the Constitution of Texas has not been provided. To supply such a text has been the effort of the authors of this book.

In order to understand the full significance of the Constitution, one should know how it came to be, its character, and the evolution of its changes. Consequently, the first chapter of the book undertakes to give in brief summary the historical background of the present Constitution and to point out some of the most salient features of each of the six constitutions which were formulated by the people of Texas. In the second chapter suggestions are offered which it is hoped will be of value in further adapting our government to the rapidly changing conditions of the State. A study of the Constitution apart from the government operating under it offers small returns to the student. Part II, therefore, deals with the actual government under the Constitution and outlines the organization, powers, and duties of the principal departments of government and gives a brief survey of local government and the State's relation to it. The text of the Constitution and selected readings are given in the Appendices.

The authors wish to acknowledge with appreciation assistance rendered in the preparation of the manuscript by Messrs. V. O. Key, Jr., Leon G. Halden, and Cecil H. Tolbert, upon whom, however, none of the probable imperfections may be placed.

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*January, 1930*

# PREFACE TO THE REVISED EDITION

Since the publication of the first edition significant changes in legislative organization and procedure have been introduced by constitutional amendment, and important proposals for the reorganization of the administrative and judicial branches of the State Government, and of local government, have been made. These changes and proposals are discussed and other facts have been brought up to date. Three new chapters have been included: "State Finance," "State Educational Administration," and "Parties, Suffrage, and Elections." Recent amendments to the Constitution have been added, and the copy of the document printed in the Appendix is taken from one which has been compared with the original Constitution and amendments in the Secretary of State's office. The book is no longer divided into Parts, and the selected readings that appeared in the Appendices of the first edition have been omitted.

A number of suggestions from teachers, editors, and public officials have been received and are gratefully acknowledged. The authors are under special obligation to Dr. Roscoe C. Martin and Miss Florence Spencer, of the University of Texas, and to Mrs. Roberta D. Stewart, for assistance in the work of revision.

F. M. S.
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*August, 1933*

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# CHAPTER I

## THE DEVELOPMENT OF THE CONSTITUTION

The system of modern government, as it has come to be accepted by enlightened peoples, involves a fundamental law—a constitution, which is "a law of a superior order and of a more permanent character than legislative acts." The chief purpose of such a law is security for the people against possible abuses on the part of those entrusted with the powers of government.[1]

Written constitutions of modern states usually consist of a preamble, including an enacting clause; a section describing the organization of the government; another setting forth the powers of its branches and the duties of its officers; a bill of rights placing limitations on these officers; and, lastly, a method of altering or amending the document itself.[2] These have been the characteristics of the six constitutions formulated by the people of Texas.

### THE MEXICAN PERIOD

The constitutional history of Texas may be said to have begun with the promulgation of the National Mexican Constitution of 1824, which created a Mexican Federal Union modeled somewhat on the plan of the government of the United States of America. The government which it created was divided into three departments—the executive with an elected president, the judiciary, and the legislative, which was bicameral. In theory the government was based on popular sovereignty and the functions of legislation were assigned to representatives of the people. The federal government was supreme in national affairs, while the states were given the power to legislate with respect to local matters. Stephen F. Austin conferred with Mexican leaders who helped frame this government, but no representatives of the

[1] For a discussion of constitutions consult C. P. Patterson, *American Government,* rev. ed., Ch. XXXI (1933); W. F. Dodd, *State Government,* 2d ed., Ch. IV (1928).

[2] H. P. Judson, "The Essentials of a Written Constitution," *The Decennial Publications,* University of Chicago, First Series, IV, 313 ff. (1903).

American colonists in Texas sat in the assembly which formulated the Constitution, and it was never submitted to the people for ratification.[3]

Under an act of May 7, 1824, Texas was joined temporarily with Coahuila to form a single state. In March, 1827, a Constitution for the State of Coahuila and Texas was promulgated. This instrument provided for a representative form of government, made liberal pronouncements of individual rights, and defined citizenship. It also placed restrictions on the institution of slavery and declared the Roman Catholic religion to be the religion of the State. Legislative power was vested in a unicameral Congress of twelve members, chosen for two years by an indirect method of election.

In addition to the religion and slavery clauses, and the other objectional features which have been mentioned, the Constitution of 1827 provided that four-fifths of the legislators were to be chosen from the Mexican population of Coahuila; it made no provision for trial by jury, and allowed many cases, both civil and criminal, to be decided by executive order.[4]

For nine years the Texans lived under this Constitution. Such laws as were enacted were printed in the Spanish language, with which but few of the colonists were familiar, and the political machinery for administering them was inadequate.

The union with Coahuila was understood to be only temporary, the promise having been made that when conditions justified it Texas was to have a separate state organization. Instead of fulfilling this promise, however, the central government became more tyrannical. Dissatisfaction spread among the Texans, and a keener desire arose for a separate state government.

### THE PERIOD OF REVOLT

This desire for fairer treatment led to the holding of a series of consultations, or conventions, of duly elected delegates. The first such convention ever held in Texas met at San Felipe de Austin in October, 1832.[5] At this meeting the delegates discussed the advisability of seeking separation from Coahuila, yet remain-

[3] "In spite of their political incapacity—or perhaps because of it—the Mexicans, after several false starts, declared in 1823 for the most complex form of government ever devised by man, and the next year promulgated the federal republican constitution of 1824." E. C. Barker, *Mexico and Texas,* 1821-1835, 2 (1928).

[4] H. P. N. Gammel, *The Laws of Texas,* I, 423-453 (1898).

[5] *Ibid.,* 477-503.

ing one of the states of the Mexican federation. At a second meeting held at the same place in April, 1833, a Constitution for the proposed State of Texas was drawn up and a petition was formulated requesting its adoption by the Mexican authorities.[6] A commission was appointed to lay these matters before the central government, but no relief was secured by the Texans through this effort.

In October, 1835, delegates to a third consultation were called to San Felipe de Austin. At this meeting formal resolutions were drawn up charging Santa Anna and other military chieftains with having overthrown, by force of arms, the federal institutions of Mexico and with having "dissolved the Social Compact which existed between Texas and other Members of the Mexican Confederacy." The delegates declared that the Texans had been forced to take up arms in defense of their rights and liberties and of the republican principles of the Federal Constitution of Mexico of 1824.[7]

The Texans did not at this time make a formal declaration of independence, but they stated it as their right, during the disorganization of the federal system and the reign of despotism in Mexico, "to withdraw from the Union, to establish an independent Government," adding that they would continue faithful to the Mexican Government so long as that nation was governed by "the Constitution and Laws that were formed for the government of the Political Association." [8]

On November 13 a Provisional Government was created. It consisted of a General Council, composed of one member from each of the municipalities represented in the Convention, a Governor, a Lieutenant-Governor, and a provisional judicial system. The English common law was adopted, with trial by jury specified, and steps were taken to protect individuals in their land titles. An army was created and Sam Houston was appointed commander-in-chief. Fighting had taken place on Texas soil, and Santa Anna was known to be advancing with a strong military force. A convention was therefore called to meet March 1, 1836, at the town of Washington.

[6] The proposed Constitution of 1833 is printed in D. B. Edward, *The History of Texas,* 196 (1836).

[7] John Sayles, *The Constitutions of the State of Texas,* 4th ed., 137 (1893); Gammel, *op. cit.,* 551-813.

[8] Sayles, *op. cit.,* 138.

### THE CONSTITUTION OF 1836

On March 2 the delegates made a formal Declaration of Independence, proclaiming the Republic of Texas and enumerating the causes which impelled them to this action.[9] Among these causes for separation they cited denial of trial by jury, denial of freedom of worship, failure to provide for public education, and the oppression of a tyrannical government.

As indicated in this declaration, there was deeper discontent than that which sprang from recent events. Historical and cultural differences between the American colonists and the Mexicans made inevitable a conflict of civilizations. The colonists were characterized by aggressiveness and independence of action which had enabled their forefathers to conquer the wilderness. They were devoted to the Anglo-Saxon culture of their ancestors, but were strangers to the Latin culture of Mexico. A Mexican official writing to President Victoria about the Texans said in 1828: "[They] travel with their political constitution in their pockets, demanding the privileges, authority, and officers which such a constitution guarantees."[10] Above all, many of the Texans hated the religious restrictions which had been placed upon them, and they had become disgusted with the pretense of popular government in Mexico.

After the adoption of the Declaration of Independence the delegates assembled as a constitutional convention, and by the sixteenth of the month they had formulated what is known as the Constitution of the Republic of Texas. This document was signed on March 17 by Richard Ellis, President of the Convention and delegate from Red River, Albert H. S. Kimble, Secretary, and by fifty-six other delegates.[11] Pending the result of war, a government ad interim was set up with David G. Burnet as President. On the first Monday in the following September, after the victory of San Jacinto, the Constitution was ratified by popular vote.

With this action Texas started on the second phase of constitutional development. In doing this, however, the framers of the Constitution of 1836 did not produce an original fabric but set

[9] Sayles, *op. cit.*, 151-154; Gammel, *op. cit.*, 1063-1067.

[10] General Manuel Mier y Teran to President Guadalupe Victoria, June 30, 1828, quoted in E. C. Barker, *op. cit.*, 4.

[11] Sayles, *op. cit.*, 155-175; Gammel, *op. cit.*, 1069-1085; R. N. Richardson, "Framing the Constitution of the Republic of Texas," *Southwestern Historical Quarterly*, XXXI, 191-220 (1928), reprinted in part in E. C. Barker, *Readings in Texas History*, 246-261 (1929).

up a republican form of government similar to the one with which they were the most familiar. They made the Texas government unitary, however, instead of federal, with legislators elected from districts rather than from sovereign states, as in the government of the United States.

The Constitution of the Republic of Texas contained a division of powers among the legislative, executive, and judicial branches of the government. The Congress was bicameral. Members of the lower house were chosen annually by districts from among citizens who had attained the age of twenty-five years and who had resided at least six months in the county from which they were elected. That body was never to exceed forty in number. Senators were to have reached the age of thirty years. They were chosen by districts according to population and served three years, one-third retiring annually. Their number was never to be less than one-third nor more than one-half the number of the lower house. Their compensation was to be fixed by law.

The chief executive was the President, elected by direct vote. His term of office was three years, and he was ineligible for two terms in succession. His powers and duties followed closely those of the President of the United States. He must have attained the age of thirty-five years. His salary was fixed by Congress.

The judicial system consisted of a Supreme Court and such inferior courts as Congress might establish. The Supreme Court was composed of the Chief Justice and the district judges, who constituted the associate judges. The Chief Justice of the Supreme Court and the district judges were elected by joint ballot of both houses of Congress. They held office for four years and were eligible for reëlection. The Constitution provided that as early as practicable Congress was to introduce by statute the common law of England, which should be the rule of decision in all criminal cases.

A section of this Constitution defined as citizens "All persons (Africans and descendants of Africans and Indians excepted), who were residing in Texas on the day of the Declaration of Independence." It provided for the naturalization of foreigners, legalized the institution of slavery, and prohibited the passing of any law against emigrants bringing their slaves into the Republic. Congress was given the power to create a system of education. A land commission was provided to settle disputed questions of title which had arisen during the period of unrest and revolution. The Anglo-American's jealousy of individual liberty and personal rights

was reflected in a "Declaration of Rights," reserving to the people "everything in this bill of rights contained, and every other right not hereby delegated."

A complicated method of changing the Constitution provided that an amendment might be proposed by either house of Congress, and when agreed to by a majority of both houses it should be entered upon the journals, referred to the next Congress, and published for three months previous to the election. If the amendment passed the next Congress by a two-thirds vote, it should then be submitted to the people. If it received a majority vote, the amendment should become a part of the Constitution. No amendment might be referred to the people oftener than once in three years.

### THE CONSTITUTION OF 1845

In September, 1836, when the citizens of Texas ratified the Constitution of the Republic they voted also on the question of annexation to the United States. At that time there were only ninety-one negative votes. Annexation was not accomplished, however, until 1845, owing to several factors, some domestic and others national. In 1845 a Constitution was drawn up, ratified by the people, and submitted to the Congress of the United States. On December 29, 1845, it was accepted by that body in a joint resolution which declared that the State of Texas should be admitted into the Union on an equal footing with the original states.

Meanwhile, State officials had been elected as provided in the new Constitution. On February 16, 1846, they were inducted into office, making complete the change from Republic to State.[12]

The convention which drafted the Constitution of 1845 has been called "the ablest political body that ever assembled in Texas." The Constitution drafted by it was pronounced by some of America's greatest authorities as the best state constitution of the time, and it has been asserted that Texas could well afford to return to the government which it set up.[13]

[12] In the annexation agreement, Texas recognized the right of the United States to adjust boundary disputes which might arise with other governments, and ceded to the United States all public edifices, fortifications, barracks, the navy, navy yard, arms, armaments, and other means of defense. Texas retained all public funds, public lands, and taxes, and was to pay her own debts. It was further agreed that with the consent of Texas four additional states might be made from her territory, any new states thus formed to be organized with respect to slavery on the principle established in the Missouri Compromise of 1820.

[13] For a fuller treatment of this period of the political history of Texas, see Annie Middleton, "Donelson's Mission to Texas in Behalf of Annexa-

The document was nearly twice as long as the Constitution of 1836, owing to the addition of new provisions. The general plan of governmental organization was similar to that of the Republic. Few changes were made in the bill of rights. The chief executive became the Governor and many of the powers of the former President of Texas were transferred to the President of the United States. The Governor was elected for two years, with an annual salary of $2,000, and he was ineligible for election for more than four years in six. He was commander-in-chief of the militia and could convene the Legislature and adjourn it in case of disagreement between the two houses. He appointed the Secretary of State, could grant pardons and reprieves, and continued to possess the veto power. The Lieutenant-Governor took the place of the Vice-President.

The legislative branch of government continued bicameral in organization with biennial sessions. Representatives were elected for two years and must have attained the age of twenty-one years. Senators were elected for four years, one-half to be chosen biennially, and must have attained the age of thirty years. The salary of legislators was three dollars a day and three dollars for every twenty-five miles' traveling to and from the seat of government, that distance being an estimated day's journey. It was provided that a census for reapportionment should be taken every eight years, and that the number of Representatives should never be less than forty-five nor more than ninety, while the number of Senators should never be less than nineteen nor more than thirty-three. The first Legislature consisted of sixty-six Representatives and nineteen Senators.

The judicial power of the State was vested in a Supreme Court, in district courts, and in such other inferior courts as the Legislature might establish. The Supreme Court consisted of three judges. These judges and those of the district courts were appointed by the Governor, two-thirds of the Senate concurring, for a term of six years with a salary of not less than $2,000 for Supreme Court judges and $1,750 for district judges. Both Supreme Court and district court judges could be removed by the Governor on address of two-thirds of each house of the Legislature for cause which was not sufficient ground for impeachment.

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tion," *Southwestern Historical Quarterly,* XXIV, 247-291 (1921), and "The Texas Convention of 1845," *ibid.,* XXV, 26-62 (1921). These articles are reprinted in part in E. C. Barker, *Readings in Texas History,* 375-393 (1929).

The Attorney-General likewise was appointed by the Governor and the Senate for a period of two years with a salary to be fixed by law. A singular provision required that a district attorney for each district should be elected by a joint vote of both houses of the Legislature to serve for two years with a salary to be fixed by law. County officers, including a sheriff, justices of the peace, constables, and a coroner were elected for two years.

Article seven of this Constitution, entitled "General Provisions," was the longest division of the document. Most of its thirty-six sections were restrictions on the Legislature. A noteworthy clause permitted the private ownership by married women of "All property, both real and personal," owned before marriage or acquired afterwards by gift or inheritance. There was another provision exempting from forced sale the homestead of a family, not to exceed two hundred acres of land or city property not exceeding two thousand dollars in value.

A short article on education declared it the duty of the Legislature to make suitable provisions for the support and maintenance of public schools. Ten per cent of the State's revenue was to be set aside as a perpetual school fund. The General Land Office was continued in operation.

As was to be expected, slavery was legalized and the Legislature was prohibited from emancipating slaves without the consent of and compensation to the owners. Neither could a law be passed prohibiting emigrants to the State from bringing their slaves with them. The State debt should never exceed one hundred thousand dollars, except in case of war, invasion, or insurrection, and no loan should ever be made except by vote of two-thirds of both houses of the Legislature.

The method of amending the Constitution provided that two-thirds of each house could propose an amendment, such an amendment to be published at least three months before the next general election of Representatives, and to be voted on by the people at such election. If a majority of all citizens of the State, voting for Representatives, voted for such amendment, and two-thirds of each house of the next Legislature should, after such election, ratify the same, it should become a part of the Constitution, provided that on each proposal in each house in each of the sessions at which it was considered readings were had on three separate days.

The only amendment which the Constitution received under this provision was approved January 16, 1850. It provided that judges

of the Supreme Court, judges of the district courts, the Attorney-General, district attorneys, the Comptroller, the State Treasurer, and the Commissioner of the General Land Office should be elected by direct vote and that district judges and district attorneys should be chosen within their respective districts.[14]

## THE CONSTITUTION OF 1861

For fifteen years Texas lived under the Constitution of 1845. During the latter part of that period a great deal of confusion arose over the powers of the states under the Federal Constitution and over the question whether a state had a constitutional right to secede from the Union. On January 18, 1861, an extra-legal convention assembled in Austin, pursuant to a call issued by a number of prominent citizens, all of whom favored secession from the Union.

On February 1 this convention passed an ordinance repealing the ordinance of annexation of July 4, 1845, and passed ordinances ratifying the Constitution of the Confederate States of America and requesting admission to the Confederation. The Constitution of 1845 was amended by the convention through the addition of appropriate clauses and the elimination of provisions made obsolete by the change of allegiance. The first clause inserted in the amended document embodied the extreme state rights doctrine in the following words: ". . . no government or authority can exist or exercise power within the State of Texas, without the consent of the people thereof previously given; nor after that consent be withdrawn." [15]

In the amended Constitution "Confederate States of America" was substituted for "United States of America," conditions of citizenship in Texas were made to conform to secession requirements, and it was stipulated that all officials should take oath to support the Constitution of the Confederacy "as long as the State shall remain a member of the Confederation." Slavery was emphasized by eliminating the emancipation provision of the Constitution of 1845, the freeing of slaves being denied to both the Legislature and the master.

After conferring on the Legislature power to call a convention, and declaring that all laws not repugnant to the Constitution of

[14] For the Constitution of 1845, with appended ordinances, see Sayles, *op. cit.*, 185-224. The amendment appears on page 222. See also Gammel, *op. cit.*, II, 1275-1302.

[15] Sayles, *op. cit.*, 225.

the Confederate States or to that of the State of Texas should remain in effect until they expired or were repealed, the convention adjourned on March 25.[16]

The amended Constitution of 1845, changed to meet the conditions growing out of secession and civil war, is called the Constitution of 1861. It was superseded by the Constitution of 1866, formed after the downfall of the Confederacy.

### THE CONSTITUTION OF 1866

The last battle of the Civil War was fought near Brownsville, Texas, May 13, 1865. Since the Southern States lost the war it became necessary for the people of Texas again to make their Constitution conform to that of the United States. On February 7, 1866, a convention met in Austin for that purpose. An ordinance was adopted declaring null and void the ordinance of secession and acknowledging the supremacy of the Constitution of the United States. Another ordinance repudiated all debts made by Texas in promoting the war, and prohibited the State Legislature from paying any of the debts made by the Confederacy. Slavery was abolished, and it was stipulated that the freedmen should be protected in their rights of person and property by appropriate legislation, with the right to contract, acquire, and transfer property, to sue and to appear in court as witnesses. The Constitution of 1845 was readopted with certain changes, and in its changed form was accepted by the people on the last Monday in June.

By these alterations, the Governor's tenure of office was extended to four years and his salary was raised to $4,000 a year. A census and reapportionment of Representatives was to be had every ten years. The number of Representatives was to be between forty-five and ninety, and the number of Senators between nineteen and thirty-three. The compensation of legislators remained at eight dollars a day and eight dollars for each twenty-five miles traveled. The Supreme Court was increased from three judges to five with a ten-year tenure at a salary of $4,500 a year. Three judges constituted a quorum of the court. The Attorney-General was to serve four years with an annual salary of $3,000. District judges were to be elected by the people for eight years and were to receive an annual salary of not less than $3,500. A dis-

[16] For the Constitution of 1861, and appended ordinances, see Sayles, *op. cit.*, 225-276; Gammel, *op. cit.*, V, 1-27. For an account of the secession movement in Texas, see C. W. Ramsdell, *Reconstruction in Texas,* Ch. I (1910).

trict attorney and a district clerk were to be elected for each judicial district. County courts were created, and provision made for the election of county officials.

A system of internal improvement was outlined. A more elaborate system of public education provided for the appointment by the Governor of a Superintendent of Public Instruction and created a Board of Education, consisting of the Governor, the Comptroller, and the Superintendent of Public Instruction. The Constitution set aside public lands for the support of the public school system and for the creation and endowment of a university and for the support of institutions for the deaf, dumb, blind, and insane of the State. It conferred power on the Legislature to levy a school tax, especially stipulating that all taxes collected from Negroes should be used in maintaining schools for Negroes.[17]

The Legislature, on a two-thirds vote, could call a convention and fix the time and place of meeting. The method of amending the Constitution remained unchanged. What was needed to give Texas complete political reconstruction was the removal from her borders of the United States troops and the seating of her representatives in the national Congress. But before these two things were accomplished the radical element in Congress got control and put into operation the Congressional Plan of Reconstruction.

## THE CONSTITUTION OF 1869

In the opinion of those who had assumed leadership in Congress, Texas had not been sufficiently punished for her part in the war. To administer this punishment, they tightened the military power upon the State, removed Throckmorton and all other civil officers from power, and prescribed the "Iron-Clad Oath," which disfranchised those who had participated in the "late rebellion." They placed the government largely in the hands of the "carpetbaggers," the "scalawags," and the recently enfranchised Negroes.

Under military domination, another convention was called to meet in Austin to frame a constitution which would conform to the requirements of the radical leaders of Congress. This Reconstruction Convention, as it is called, lasted, with intermittent sessions from June 1, 1868, to February 6, 1869. It spent a hundred

[17] For the system of education provided in the Constitution of 1866 see Sayles *op. cit.*, 327-330. The Constitution as amended, with ordinances, will be found *ibid.*, 299-354; Gammel, *op. cit.*, V, 855-885. See also Ramsdell, *op. cit.* Ch. V.

thousand dollars, and finally dispersed without formally completing, dating, or signing the document which had been drawn up.[18]

Despite these and many other irregularities, the document was ratified by a restricted electorate under supervision of military authorities. It is known as the Constitution of 1869. Under it E. J. Davis was elected Governor and other officials were chosen.

The political convictions of those who were in control in Texas are indicated by the first clause of the bill of rights of the Constitution of 1869, which read: "That the heresies of nullification and secession, which brought the country to grief, may be eliminated from future political discussion . . . we declare . . . the Constitution of the United States . . . to be the supreme law; that this Constitution is framed in harmony with and in subordination thereto, . . . and can only be changed, subject to the national authority."

Few changes were made in the general organization of government. The Governor's salary was raised to $5,000; the number of Representatives was limited to ninety and Senators to thirty. The Supreme Court was reduced from five to three judges, all judicial officials were again made appointive, and all elections were to be held at the county seat and were to continue from eight o'clock in the forenoon until four o'clock in the afternoon through four consecutive days.

The Constitution of 1869 declared that the free school system should receive the interest on a permanent fund made up of all receipts from public lands, one-fourth of the annual taxes, and all receipts from the poll tax. The office of Superintendent of Public Instruction was continued and his duties were defined. There was also a compulsory school attendance provision.

The first Legislature which met under this Constitution declared all laws and ordinances passed while Texas was a member of the Confederacy to be null and void. The war debts were again repudiated, and the thirteenth and fourteenth amendments to the Federal Constitution were ratified. Negroes were enfranchised, while the disabilities of the disfranchised whites could be removed only by the national authorities. This is, in general, the most poorly constructed of the Texas Constitutions.

In the congressional election of 1871 the Davis party received a severe blow when a Democratic delegation was chosen. The fol-

[18] Sayles, *op. cit.*, 377-469; Gammel, *op. cit.*, VII, 393-430. See also Ramsdell, *op. cit.*, Ch. IX.

lowing year a majority of anti-Davis men were elected to the Legislature. That body then repealed many of the objectionable laws over the Governor's veto. Among those repealed was the law requiring elections to be held for four days at the county seat. In the gubernatorial election of 1873 Davis was defeated by Judge Richard Coke, a former Confederate officer and the nominee of the Democrats. Governor Davis contested the election, and though the famous "semi-colon" decision of the Supreme Court was in his favor, he was forced to retire from office.

## THE CONSTITUTION OF 1876

One of the first problems confronting the Coke administration was created by a demand for the revision of the Constitution of 1869. In view of the fact that the Democratic State convention had demanded a constitutional convention in 1873, the Governor advised early consideration of the matter. As this demand became more insistent the question arose as to the best method of revision. Some said it should be done by amendments to be proposed to the people by the Legislature; others advocated a complete redrafting of the Constitution by a convention called for that purpose.

As time passed another question presented itself. This was embodied in a resolution introduced in the Legislature on March 5, 1874, by C. M. Winkler providing for a Commission of nine men to "thoroughly revise, harmonize, and systematize" the document so as to present "an entire and complete" Constitution, which, upon completion, would be submitted to the voters of the State by the Governor for ratification or rejection. This idea was not adopted, however, and on March 16, 1874, Governor Coke recommended in a message to the Legislature that a joint committee be appointed to prepare and recommend to the people "an instrument of organic law, complete in all its parts." The so-called Camp-Sayers Committee was appointed, and though its recommendations were highly commended, they were not submitted by the Legislature to the voters.

It became apparent that public sentiment was favorable to the convention method of changing the Constitution. Consequently in his message to the second session of the Fourteenth Legislature on January 12, 1875, Governor Coke recommended the calling of a constitutional convention. Pursuant to this recommendation, a resolution was introduced proposing a convention to meet in Austin the first Monday in May, the delegates to number one hundred and

twenty, being three from each of the thirty senatorial districts and thirty from the State at large. Much debate followed. Fear was expressed as to the attitude of the Federal Government toward the rewriting of the Texas Constitution, some expressing apprehension of the return of military government in the State if such was undertaken. In the final form of the resolution as approved by the Governor, a convention was called to meet in Austin on the first Monday in September, 1875. This convention was to be composed of ninety delegates, three to be elected on the first Monday in August from each senatorial district.

This was accordingly done. Of the delegates chosen, one had been a member of the convention of 1845; eight had been members of the convention of 1861; and one had sat in the convention of 1866. Many of them, however, had had experience in legislative and other deliberative bodies and were worthy of the task entrusted to them. In view of happenings of the immediate past it was not surprising that the instrument which they wrote showed marked reaction to the experiences through which the people had gone under "carpetbag" rule. Instead of referring to the "heresies of nullification and secession," as in the Constitution of 1869, the document of 1876 declared Texas to be a "free and independent State subject only to the Constitution of the United States," and asserted that the maintenance of free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, and that all political power is inherent in the people. The military power was declared to be subordinate to the civil authority, and the bill of rights was pronounced inviolate.

In further contrast to the instrument of 1869, which permitted the suspension of the writ of habeas corpus, the Constitution of 1876 declared that it might "never be suspended." It provided also for biennial sessions of the Legislature instead of annual sessions, as in 1869. Heated debate occurred in the convention upon the number of members of the two houses and their powers. As finally adopted, the instrument provided for a Senate of thirty-one members, while the number in the House might be increased with the growth of population, in the ratio of not more than one Representative to each fifteen thousand inhabitants, up to one hundred and fifty members. The Legislature was to meet in regular session, and in special sessions of thirty days' duration upon the Governor's call. The salary of legislators was reduced from eight dollars a day to five dollars a day for the first sixty days of the regular session

and two dollars a day for the remainder of the session. There was a mileage allowance of twenty cents as against thirty-two cents in 1869.

In considering the executive department the arguments in the convention centered around the questions of salary and length of tenure. As at first presented to the convention the salary of the Governor would have remained at $5,000, that of the Attorney-General at $2,000, with certain fees, that of the Secretary of State at $2,000, and that of the Treasurer, the Comptroller, and the Commissioner of the General Land Office at $2,500 each. The Granger element among the delegates attempted to place salaries below this scale. There was an unsuccessful effort also to eliminate the office of Attorney-General. In its final form, these offices and salaries were retained, with exception of the Governor's salary, which was fixed at $4,000, and the term of office of all of them at two years. All executive officers were made elective by the people except the Secretary of State, who was to be appointed by the Governor.

The operation of the judiciary under the Constitution of 1869 had been especially disagreeable to the people. Specific changes were therefore made. As finally adopted, the judiciary article provided for a Supreme Court of three members, a Court of Criminal Appeals of three judges, Courts of Civil Appeals in each of the several districts as created by the Legislature, district courts, county courts, justices' courts, commissioners' courts, "and such other courts as may be established by law." There was a general reduction in the salaries of judges.

In the matter of suffrage, reaction to restriction under the Constitution of 1869 was evident. Aliens who had declared their intention to become citizens were permitted to vote. In city elections it was provided that only taxpayers could vote to determine the issuance of bonds or the expenditure of public money. Return to precinct elections was provided, and the registration of voters was never to be permitted.

The office of State Superintendent of Public Instruction was abolished and the duties of that office given to a Board of Education composed of the Governor, the Comptroller, and the Secretary of State. No compulsory law was permitted, and separate schools were required for white and Negro children. State University lands, as provided in earlier constitutions and laws, were reduced from 3,200,000 acres to 1,000,000 acres, and it was stipu-

lated that no tax should be levied or appropriations made for the purpose of erecting buildings for the University of Texas.

In the section of the Constitution entitled "General Provisions," the Legislature was forbidden to make appropriations for private or individual purposes or for internal improvements. City, precinct, or county option with respect to the sale of intoxicating liquors was permitted, and the Legislature was allowed to prohibit the sale of such liquors in the vicinity of colleges, provided they were not located at the county seat. The city of Austin was made the capital of the State and three million acres of the public domain were set aside for the erection of a new capitol. The homestead provisions remained in the Constitution, and household and kitchen furniture to the value of two hundred and fifty dollars was exempted from taxation, as was also all property used for charitable, educational, or religious purposes. Certain privileges were granted to railroad companies, they were designated as common carriers, and regulations were fixed under which they might operate in this State. The procedure was outlined for creating and organizing new counties and for locating or changing the county seat. It was provided that municipal and private corporations should be created and regulated by general laws.

The method of amending the Constitution was simplified by permitting the Governor to proclaim a proposed amendment after it had received a majority vote of the electorate without the action of a new Legislature. No provision was made for the calling of another constitutional convention.[19]

### REFERENCES

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[19] The Constitution of 1876, with ordinances passed by the convention, is printed in Sayles, *op. cit.,* 499-603, and Gammel, *op. cit.,* VIII, 779-834. The most scholarly discussion of that document is *Making the Texas Constitution of 1876,* by S. S. McKay (1924). A scintillating critical article on the Constitution is "Mysticism, Realism, and the Texas Constitution of 1876," by S. D. Myres, Jr., in the *Southwestern Political and Social Science Quarterly,* IX, 166-184 (1928).

Confederate States, together with other valuable materials. The most comprehensive secondary source for all phases of Texas history is the *Southwestern Historical Quarterly,* of which thirty-five volumes have been published. The *Southwestern Social Science Quarterly,* of which thirteen volumes have been issued, contains much material helpful in the study of Texas political history and government.

The best single volume of reference material on the history of Texas is E. C. Barker, *Readings in Texas History* (1929). The causes of the Texas Revolution are treated by Dr. Barker in his *Mexico and Texas, 1821-1835* (1928). An excellent discussion of the historical background of the Constitution is S. S. McKay, *Making the Texas Constitution of 1876* (1924). His *Debates in the Constitutional Convention of 1875* has been recently published by the University of Texas Press. Political conditions in the State during reconstruction are described and accounts of the constitutional conventions of 1866 and 1868-1869 are given in C. W. Ramsdell, *Reconstruction in Texas* (1910). A valuable analysis of the bill of rights in Texas Constitutions is given in John Robert Anthony, *The Bill of Rights in Texas* (Master's Thesis, University of Texas, 1928). C. D. Judd and C. V. Hall, *The Texas Constitution: Explained and Analyzed* (1932), Chs. I, II, III, discuss the background and characteristics of the present Constitution and the bill of rights. The text of the Constitution of 1876 with amendments to date is printed in the Appendix of the present text. The Constitution, with annotations, may be found in Vernon's *Annotated Revised Civil Statutes of the State of Texas* (1927).

# CHAPTER II

## AMENDMENT AND REVISION OF THE CONSTITUTION

The difference between amendment and revision of a constitution is only one of degree. Amendment involves relatively few changes in, or additions to, the existing document, while revision consists in the drafting and adoption of a new, or practically new, constitution. Amendment may be accomplished in the following ways: (1) proposal by the legislature and acceptance by the people at an election; (2) proposal by a constitutional convention and adoption by the voters at the polls, which is the only method followed in New Hampshire; (3) amendment by the legislature without reference to the people, which method is used in Delaware; and (4) by the initiative and referendum, either with or without legislative approval at some step in the process. Revision of a constitution is effected by completely redrafting the existing constitution or by the adoption of a series of amendments changing entirely the character of the document, and is usually done by a constitutional convention.

Since the Texas Constitution does not provide for the revision of the document by a constitutional convention, the amendment of the Constitution will be considered first.

### AMENDMENT OF THE CONSTITUTION

*Constitutional Provision.*—The mode of amending the Texas Constitution is set out in the final article of the document, which reads as follows:

> The Legislature, at any biennial session, by a vote of two-thirds of all the members elected to each House, to be entered by yeas and nays on the journals, may propose amendments to the Constitution, to be voted upon by the qualified electors for members of the Legislature, which proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the Legislature, in one weekly newspaper of each county, in which such a newspaper may be published; and it shall be the duty of the several returning officers of said election,

to open a poll for, and make returns to the Secretary of State, of the number of legal votes cast at said election for and against said amendments; and if more than one be proposed, then the number of votes cast for and against each of them; and if it shall appear from said return, that a majority of the votes cast, have been cast in favor of any amendment, the said amendment so receiving a majority of the votes cast, shall become a part of this Constitution, and proclamation shall be made by the Governor thereof.[1]

*Only Regular Sessions May Propose Amendments.*—The Attorney-General has ruled that "biennial session" in the foregoing article means the regular session of the Legislature held every two years as provided in Article III, section 5 of the Constitution, and hence amendments can be submitted to the people only by a regular session.[2] Furthermore, a subsequently called session of the Legislature can not change the date for election on a constitutional amendment set by the regular session. The regular session of the Thirty-sixth Legislature proposed an amendment to be voted upon in November, 1920. It later developed that November, 1919, would be a more desirable time to vote upon the amendment. In view of the constitutional requirement that amendments be submitted by a regular session, the question arose as to whether it would be possible for a called session to change the date of the election from November, 1920, to November, 1919. In advising against such a change the Attorney-General said: ". . . it is apparent that only a Regular Session of the Legislature may propose amendments to the Constitution, and that in proposing such amendments the Regular Session itself must 'specify' the time when such amendments are to be voted upon." [3]

*Publication of the Proposed Amendment.*—The constitutional requirement that a proposed amendment shall be published once a week for four weeks commencing at least three months prior to the election is interpreted as mandatory by the Attorney-General. In 1923 the Thirty-eighth Legislature submitted to the people an amendment pertaining to State highways, providing that it should be voted upon on the fourth Saturday in July, 1923. The Secretary of State failed to mail out the resolution to the newspapers early enough for it to be published in keeping with the constitutional requirements, less than two months remaining between the date of the first publication and the time for the election. Under such cir-

[1] *Constitution,* Art. XVII, sec. 1.
[2] *Biennial Report of the Attorney-General,* 151-152 (1918-1920).
[3] *Ibid.,* 153.

cumstances had the amendment been legally submitted? Would the failure to publish the proposed amendment exactly three months before the date of election invalidate the amendment? The Attorney-General in ruling upon this question stated:

> . . . it is the opinion of this Department that the beginning of publication of a proposed constitutional amendment at least three months prior to the date of the election is absolutely essential to the validity of the adoption of the amendment by reason of constitutional mandate; and since no publication began in this instance until on or after June 4, 1923, and the election on the amendment was set by the legislative resolution for the fourth Saturday in July, 1923, there can not be adequate compliance with the Constitution with respect to publication, and any favorable vote on the amendment would be ineffective, and the proposed amendment would not become a part of the Constitution.[4]

*Governor Can Not Veto Amendment Proposal.*—The Governor has the right to veto bills, orders, and resolutions to which the concurrence of both houses is needed.[5] He has beyond a doubt the right to veto bills, and as to resolutions and orders, it has been interpreted that he has the right of veto only if the resolution or order contains legislation. Would the Governor have the right to veto a joint resolution proposing an amendment? In answer to this question, it has been pointed out that "all joint resolutions proposing amendments to the Constitution of the State of Texas are not required to be presented to the Governor for his approval or disapproval." [6] In fact, the entire amending process has been declared to be separate and apart from the other parts of the Constitution.

> It [Art. XVII, sec. 1] affords a complete procedure. It does not refer to, nor is it dependent upon, any other part of the Constitution. It does not deal with matters of general legislation, but is confined exclusively to the one subject of amending the Constitution.[7]

In view of this independence of the amending process, it is clear that resolutions proposing amendments are not controlled by the ordinary legislative procedure. That is, the resolution does not have to be read upon three different days, and if voted down, contrary to the procedure on bills and other resolutions, it may be voted on day after day until it receives the necessary two-thirds majority.

[4] *Biennial Report of the Attorney-General,* 170 (1922-1924).
[5] *Constitution,* Art. IV, sec. 15.
[6] *Biennial Report of the Attorney-General,* 141 (1918-1920).
[7] *Ibid.,* 142.

*When an Amendment Takes Effect.*—A constitutional amendment takes effect when the returns have been counted, it has been judicially held. On the fifteenth day after the election the Secretary of State, in the presence of the Governor and Attorney-General, or either one of them, opens and counts the returns. If the returns show that a majority of the votes cast on the amendment has been cast in its favor, the amendment is adopted, and the Governor by proclamation declares the amendment to be a part of the Constitution. The fact that a majority has voted in favor of an amendment does not give that amendment operative force from the time of election.[8]

## CONSTITUTIONAL AMENDMENTS SINCE 1876

*Number of Amendments Proposed, Adopted, and Rejected.*—Texas has been operating under the present Constitution for fifty-seven years, and during this period one hundred and twenty amendments to the Constitution have been proposed.[9] Prominent among the subjects of these proposed amendments have been taxation, the judiciary, Confederate pensions, highways, prisons, prohibition, suffrage, salary increases, and amendments concerning administrative organization. Probably the amendments most frequently proposed have been those dealing with the subjects of taxation, the salary of the Governor, the salary of legislators, and pensions for Confederate soldiers. Ten times has the Legislature submitted an amendment to increase the salaries of legislators; the last attempt was successful in 1930. Likewise, the people have seven times voted down attempts to increase the salary of the Governor.

Of the one hundred and twenty amendments proposed since 1876, sixty have been adopted, fifty-seven have been defeated at the polls, one was never submitted, one was submitted illegally, and the Election Board has been enjoined from counting the votes cast for one amendment in November, 1932. Dr. Irvin Stewart shows that through 1922, thirty-eight amendments had been adopted, fifty-one had been rejected, and one had not been submitted.[10] The ratio of adoptions since 1922 has been much better. Of the thirty amendments proposed by the Legislature since 1922, twenty-two

[8] *Sewell v. The State,* 15 Cr. R. 56 (1883); *General Laws,* 43d Leg., reg. sess., 764 (1933).

[9] Dr. Irvin Stewart in "Constitutional Amendments in Texas," *Southwestern Political Science Quarterly,* III, 145-158 (1922), presents a survey of the history of constitutional amendments in Texas through 1922.

[10] *Ibid.,* 147.

have been approved by the people, one was submitted illegally, the counting of the vote for one has been enjoined, while only six have been defeated.[11]

*General and Special Elections.*—"General elections seem to have proved more favorable to constitutional amendment than special elections; for nearly two-thirds of the amendments submitted at general elections have been adopted, and over two-thirds of those submitted at special elections have been defeated." [12] Since 1922, twenty-three amendments have been submitted at general elections, and all of these have been approved by the people. In the same period six amendments have been submitted at special elections, and all have failed of adoption. The record since 1922 is convincing proof that a general election is more favorable than a special election to have the people vote upon constitutional amendments.

*Vote Cast on Amendments.*—In examining the vote cast for the one hundred and twenty amendments which have been submitted to the Texas electorate, one notes that the vote in practically every instance has been small whether the amendments were approved or defeated. "The fact is that a representative vote has been cast in Texas on constitutional amendments on but two occasions, these on the prohibition amendments of 1887 and 1911, which, by the way, were submitted in special elections. They brought out a big vote because they came up from the people; there was popular demand for the election, and, moreover, there were long and intensive campaigns in respect to the proposals." [13]

The second amendment to be proposed to the Texas Constitution, submitted in 1881, was defeated by a vote of 36,647 to 20,149. The vote cast in the Governor's race in 1880 had been 264,204. The judiciary amendment of 1891, a rather important and fundamental change, was approved by the electorate by the small vote of 37,445 to 35,695, while the vote cast in the Governor's race in 1890 had been 342,409. The suffrage amendment in 1895 was approved, the total popular vote being 319,911 as compared with a total vote of 539,788 cast in the Governor's race of 1894. The suffrage amendment of 1901, the prohibition amendment of 1911, and a taxation amendment of 1919 brought out rather large votes, but such cases are decidedly in the minority.

Representative illustrations of the low vote cast on constitutional

[11] Files of the Secretary of State.
[12] Stewart, *op. cit.*, 145.
[13] *Dallas Morning News,* September 13, 1927.

amendments in Texas are to be found in the elections of 1925, 1927, and 1929. The total vote cast on four amendments in 1925 and in 1927 was exceedingly low. Of two amendments submitted to the voters in 1929, the judiciary amendment was defeated by a vote of 77,066 to 49,681, while the proposal to increase the salary of the Governor met a similar fate, being defeated by a vote of 76,166 to 49,644. In the first primary of 1928, the total vote cast in the Governor's race was 737,901.[14] The vote cast in the Governor's race was small when compared to the electorate, which was estimated at 1,368,044, but the vote cast on the two constitutional amendments of 1929, when compared with the electorate, was even lower. Hardly one-tenth of the electorate participated in the election on the constitutional amendments.[15]

The *Dallas Morning News* in commenting editorially on the vote cast on the above two amendments stated:

> If ever there comes a time when citizenship has a direct chance to take part in government it comes when there is an election to change the fundamental law. And yet it is very difficult to get one voter in ten to either say yes or no on propositions so simple as raising the Governor's salary, or enlarging a court to a full-size, full-time, full-authority basis. In Dallas County about one-tenth of the usual vote was cast. Far less than one-tenth of the qualified voters went to the polls. In several boxes as few as five persons represented the total turnout.[16]

Thus, it may be concluded that constitutional amendments in Texas, with few exceptions, have repeatedly polled small votes. How can this inertia in voting be explained? Is it true that the electorate is not interested in proposed changes in the Constitution? Except in a few instances the vote on constitutional amendments has been so small that it can hardly be said that the electorate spoke authoritatively. With few exceptions, the vote on defeated amendments has been so small that it can not be concluded that those amendments were not desired by the people as a whole. It has been pointed out that in 1927 only one-fifth of the qualified electorate voted on the four amendments of that year. "Approximately a mil-

[14] *Texas Almanac,* 243 (1929).

[15] In the last two general elections a larger vote has been secured: the highest total vote on a single amendment in 1930 was 208,617, while the amendment exempting homesteads from State taxation polled a total vote of 547,385 in the election of 1932. The total vote for Governor in the latter election was 859,575.

[16] *Dallas Morning News,* July 19, 1929.

lion voters remained away from the polls. They were indifferent; perhaps a bit confused as to what it all meant." [17]

*Reasons for Small Vote and Defeat of Constitutional Amendments.*—There are several explanations for the small vote cast on constitutional amendments in Texas. First, it might be inferred that the proposed amendments have not been desired by the electorate. But if the electorate was positively opposed to the suggested changes, why did it fail to speak emphatically against them? Second, possibly the people prefer that their representatives make these needed changes rather than be called upon to decide such questions themselves. Is it possible that the people would allow their Legislature to change the Constitution by mere legislative act? From the statistics on the extent to which the franchise has been exercised on questions of constitutional amendment, the electorate might as well intrust the Legislature with this power. Third, it might be said that frequently the amendments are not thoroughly understood by the voter, because little or no campaign has been conducted in their behalf. Rather than cast an ignorant vote, many stay away from the polls. Others, more reactionary, vote against all changes as a matter of principle. Finally, the small vote can be explained by the general inertia and lethargy on the part of the electorate. Constitutional amendments are unimportant to the average Texas voter, with the result that the customary lethargy of the voter is even more pronounced when constitutional amendments are up for a vote.

Some of the proposed amendments probably lacked merit and did not deserve to be adopted. Others were badly framed, but the most general cause of failure at the polls is the fact that they are not sufficiently explained to the people. To remedy this shortcoming it has been

> . . . suggested that there ought to be not only advance and concurrent publicity, but also that there ought to be full publicity of proposed changes in constitutions whether submitted by conventions or Legislatures. The example of a number of States, such as California, Oregon, Ohio, and Michigan, is pointed out. These publish officially and distribute to every registered voter a pamphlet setting forth the text of all proposed amendments and of the provisions they would displace, the changes being indicated by differing type faces. Each of such proposed changes is followed by an explanation upon the part of the proponents and an explanation upon the part of the opponents.

[17] *Dallas Morning News,* August 9, 1927.

Then there is a first-class index and lastly a facsimile copy of the ballot. These States go to a great deal of trouble and expense to inform the citizens. A study of the election returns shows that it pays.[18]

This suggestion for the use of the so-called "voter's guide" has merit. Although it does not assure the passage of amendments, it secures at least one desired result: it brings out a larger percentage of the electorate to the polls, and they come as voters who are capable of casting a relatively intelligent vote.

*Conclusion.*—The mortality rate of constitutional amendments in Texas has been high. Although there is no formula by which their passage can be assured, there are certain precautions which can be taken to give proposed amendments a fair chance. First, the necessity, expediency, and practicability of a proposed change should be well established by study and research before the submission of an amendment. Second, care should be taken that proposed amendments are properly drafted. Legislative reference bureaus and expert bill drafters lessen the danger of poor drafting. A bureau which devotes its whole time to the drafting of measures is more capable of properly drawing up an amendment than most legislators and administrative officers. Third, after the amendments have been submitted, they should be given wide publicity. A properly conducted campaign for the amendments, the use of the voter's guide, and an extensive use of the newspapers would be expensive. But an election on constitutional amendments costs the State and county governments around $120,000.[19] If the amendments are needed, it would not be unwise to spend a goodly sum to give them a fairer chance of being approved by the people. The increased vote brought out would be impressively decisive one way or the other.

### MOVEMENT FOR A CONSTITUTIONAL CONVENTION

*The Old and the New.*—The failure to bring about desired changes in the Texas Constitution through the amending process has led to a movement to revise the Constitution through the use of a constitutional convention. Amendment after amendment, constructive and progressive in nature, has been defeated at the polls by a small group of voters. With this failure to keep pace with the growth of society, the State finds its development hampered by an out-of-date Constitution.

[18] *Dallas Morning News,* November 16, 1921.
[19] *Ibid.,* August 9, 1927.

The movement for revision does not connote any disrespect for the framers of the present Constitution. Rather, those favoring it would consider them as ordinary human beings acting under the influence of an abnormal environment, and would dispel with common sense the mist of sentimentalism that has come to surround their handiwork. As one students asks, should the people be called upon to believe "that the Constitution is the work of infallibility, like the Decalogue handed down from on high with all its eternal verities, while the hills about Austin quaked, and the smoke ascended, and the people stood afar off filled with awe?" [20] All arguments for the maintenance of the status quo based solely upon the wisdom of our incomparable forefathers are specious.

The conditions prevailing at the time of the framing of the Constitution are reflected in its provisions. The State was just emerging from the disastrous period of Reconstruction, and the actions of the autocratic E. J. Davis, of "carpetbag" legislators, and of a corrupt judiciary were fresh in the minds of the people. In the convention the "delegates, fearing that the Government might again be wrested from the people, loaded the new Constitution with limitations to hog-tie the carpetbaggers should they regain power." [21] "This has resulted in perpetuating a régime of fiscal penuriousness and imposing permanent limitations of a very serious character upon the powers of public organs and officials." [22] The prerogatives of the Legislature were reduced to a minimum and the discretionary authority of civil servants was practically eliminated.

It is a cardinal principle of political science that the constitution of a people must reflect the social, economic, and political needs of a people. "As new truths are disclosed, as new discoveries are made, as new inventions are devised, as civilization advances, the fundamental policies of government must change to keep pace with the progress of the day." [23] The Texas Constitution has failed to keep pace. Problems have arisen of which its framers never dreamed. Old problems need to be coped with in a more effective manner. The whole philosophy of government has undergone a radical transformation. Yet we cling obstinately to the antiquated Constitution of 1876.

[20] S. D. Myres, Jr., "Mysticism, Realism, and the Texas Constitution of 1876," *Southwestern Political and Social Science Quarterly,* IX, 172-173 (1928).
[21] *Dallas Morning News,* November 16, 1921.
[22] Myres, *op. cit.,* 182-183.
[23] Pat M. Neff, *The Battles of Peace,* 21 (1925).

The whole question is succinctly stated in this extract from a thoughtful editorial:

> Texas has grown great in the last sixty years. It is a leading State, yet, like an overgrown boy in short pants, it is trying to get along with a Constitution mostly outgrown. A Constitution should be based on conditions as they are, and not on conditions as they used to be. Our State Government is in a strait-jacket, hindered in its forward development by antiquated provisions no longer useful.[24]

*Movement for Revision.*—The movement to revise the Constitution of 1876 can be traced back to dissatisfaction with the document a few years after its adoption. Of course, there was opposition to its adoption in 1876,[25] but not all would have favored any proposal. It was approved by a vote of 136,606 to 56,652.[26] Although he had advocated its adoption, Richard Coke, while Governor, remarked that the Constitution of 1876 was a hindrance to the growth of Texas.[27] At a special session of the Legislature in 1901, there was agitation for the calling of a constitutional convention. "It was said then, and it is yet said, that the Constitution is archaic, that it does not fit present conditions as it did the conditions of 1876, the year of its adoption." [28]

Since 1917 the question of the calling of a constitutional convention has been constantly before the Legislature. During this period the Legislature has met in nine regular sessions, and with the exception of the session of 1925, at least one resolution has been introduced in each session for the calling of a constitutional convention.[29] In the regular sessions of 1917 and 1923 there were three such resolutions introduced. Of the numerous resolutions that have been introduced for this purpose since 1917, only one has completed all the steps in the legislative procedure and reached the people. The Thirty-sixth Legislature passed such a resolution in 1919, which submitted to the people the question as to whether it was their will that a constitutional convention be called. This question was put to a vote in November, 1919, and was defeated by a vote of 71,376 to 23,549.[30] Out of an electorate of approximately 811,104, only 94,925 voters expressed themselves either way on this

[24] *Dallas Morning News,* September 20, 1929.
[25] Myres, *op. cit.,* 177-182.
[26] Records of the office of the Secretary of State.
[27] Neff, *op. cit.,* 22.
[28] *Dallas Morning News,* November 16, 1921.
[29] *House and Senate Journals, passim* (1917-1933).
[30] Records of the office of the Secretary of State.

important question.[31] All this vote revealed, then, was that out of the approximate ten per cent of the qualified electors voting on the question, a majority was against the calling of a convention.

With the failure of this attempt, the movement for revision did not die. It was stated in 1921 that notwithstanding "the vote of 1919, there seems to be warrant for asserting that the need of a new Constitution in Texas is universally felt, and that the proposal was rejected because of the manner in which the Legislature went at the thing." [32] The Texas Bar Association has favored the calling of a convention to revise the Texas Constitution. Before its annual meeting in 1928, the president of the organization made the following rather significant statement:

> We have exercised hard common sense in all lines of business. We have been progressive and intelligent in all walks of life save and except one, and that one more important to our happiness and welfare than all others—our government. We need a "new model"; the "old model" is obsolete. It has served its purpose.[33]

### LEGAL ASPECTS OF THE CONVENTION

*Legality of the Popular Convention.*—Texas is one of the twelve states not having in the state constitution a provision for the calling of a constitutional convention. In these states, the so-called authorized convention can not be held, but, with the exception of Rhode Island, the popular convention is deemed to be legal in these states. In Rhode Island the Legislature asked the courts for a ruling upon the question as to whether it could call a constitutional convention. The opinion pointed out that the Legislature did not have such power, and in view of the mode of amendment prescribed in the Constitution of Rhode Island, the document could not be constitutionally or legally amended in any other manner.[34] "The decision, however, has been generally discredited and the weight of authority is that notwithstanding such a provision in the existing constitution, a popular convention can be duly called for revising the fundamental law." [35] Dodd holds that popular conventions are legal. He says:

> It has now become the established rule that where the Constitution contains no provision for the calling of a convention, but has no

[31] *Texas Almanac,* 261 (1929).
[32] *Dallas Morning News,* November 16, 1921.
[33] *Ibid.,* June 2, 1928.
[34] *In re Constitutional Convention,* 14 R. I. 649 (1883).
[35] Homer Hendricks, "Some Legal Aspects of Constitutional Conventions," *Texas Law Review,* II, 196 (1924).

provision expressly confining amendment to a particular method, the legislature may provide by law for the calling of a convention—that is, the enactment of such a law is within the power of the legislature unless expressly forbidden. . . .[36]

A similar statement was made by the North Dakota Supreme Court in 1896 in *State v. Dahl.*[37] Without going any further into the mass of opinion, which points to the legality of popular conventions, it may be concluded that a popular convention in Texas would be legal. In fact, the Convention of 1875 was a popular convention, and the legality of the work of this body, the present Constitution, has never been questioned. Such conventions are based upon the right of the people to alter, change, or abolish their government.

*Calling the Convention.*—In a consideration of the procedure in the calling of a convention, the question arises as to whether the legislature may call a convention without putting the question to a vote of the people. The general tendency of first putting the question to a vote of the people is pointed out by Hoar, who says that ". . . convention-calling is not a regular function of the legislature, and there is a growing tendency toward the view that the legislature has no power to call a convention without first obtaining permission from the people." [38] Ruling Case Law supports the doctrine that the legislature should first submit the question of calling a convention to a vote of the people.[39] A Texas attorney is of the opinion that the "election of delegates to a convention which is called by the legislature without popular authorization should be enjoined." [40]

The question turns upon the doctrine which one holds with regard to the powers of the state legislature. If the legislature is a body possessing inherent powers, it would indubitably have the power to call a constitutional convention without consulting the wishes of the electorate.[41] On the other hand, if one subscribes to the doctrine that the legislature may exercise only delegated powers, the conclusion must be that, in the absence of a specific grant of power to call a convention, the legislature has no such power.

[36] W. F. Dodd, *The Revision and Amendment of State Constitutions,* 44 (1910).
[37] R. S. Hoar, *Constitutional Conventions,* 48 (1919).
[38] *Ibid.,* 68.
[39] 6 *R. C. L.* 27 (1915).
[40] Hendricks, *op. cit.,* 202.
[41] Judge Jameson in his work, *The Constitutional Convention,* expounds the theory of the supremacy of the legislative body.

In 1923 the Attorney-General of Texas at the request of the Legislature ruled upon the question. The ruling of the Department was to the effect that the Legislature could not without an affirmative vote of the people call a convention to revise or alter the State Constitution. The opinion held that the calling of a convention is not within the grant of legislative power to the Legislature, but that the people have reserved to themselves the right to change their fundamental law, that they have specified in their Constitution that the Legislature can only submit specific amendments, and that it is only through necessity and usage that the Legislature can even submit to the people the question of calling a convention. The ruling indicated that the manner of amending the Constitution has been definitely prescribed, and until that method should be changed, or until the people had acted, the Constitution could not be legally changed in any other way.[42]

This opinion of the Attorney-General is criticized by Professor Haines as contrary to the weight of authority, which is in favor of the power to call a constitutional convention residing in the Legislature where no provision is made in the Constitution for the calling of a convention. There are few opinions against this inherent power in the Legislature to call a convention without the approval of the electorate and only two important judicial precedents against the exercise of such power. Admitting that the opinion might be correct from the standpoint of policy, he contended that it raised serious difficulties from the standpoint of interpretation of state laws and constitutions.

> The theory of implied limitations on legislative powers is an unsound theory of judicial construction as applied to the interpretation of state constitutions. It needs to be sparingly applied, if not to be discarded entirely, if representative bodies are not to be unduly restricted in their functions.[43]

*May the Governor Veto the Call for a Convention?*—In calling a constitutional convention, the question arises as to whether the Governor may veto the resolution calling the convention. In Texas, there is neither Case Law nor opinion on this question. Following the reasoning of the legal department that the Legislature is not exercising a legislative power in calling a convention, and that it

[42] *Biennial Report of the Attorney-General,* 192-209 (1922-1924).

[43] C. G. Haines, "Can a State Legislature Call a Constitutional Convention without First Submitting the Question to the Electorate?" *Texas Law Review,* I, 329-336 (1923).

acts only by virtue of necessity and usage, it would be concluded that the Governor could not veto such a resolution. As has been indicated the veto power of the Governor extends only to matters of a legislative nature. Hoar is of the opinion that the legislature in adopting such a resolution is merely giving the people an opportunity to act in their sovereign capacity.[44] In regard to the convention act, which provides the details of holding the convention and which is legislative in nature, it follows that the Governor may exercise his veto over such an act.[45] The Governor, then, can not block the procedure by vetoing a resolution calling an election on the question of a convention, but he can at least suspend it for a time by vetoing the convention act.

*May the Legislature Act as a Convention?*—This question grows out of the attempt on the part of the legislature to propose amendments with the intent of changing entirely the existing constitution. For example, in 1912 the Indiana Legislature proposed a bill which was the existing constitution with twenty-three amendments. This was to be submitted to the people, and if it had been adopted, it would have had the effect of a new constitution. The power of the Legislature to change the fundamental law in this manner was denied by the courts.[46] In 1917 the Legislature of North Dakota proposed an entirely new constitution. The Attorney-General of the State held valid this attempt on the part of the Legislature to revise the Constitution. He emphatically declared that the proposed method of amendment was clearly constitutional and "the arguments in favor of its legality unanswerable." [47] Judge Jameson, who in most questions upheld the supreme authority of the legislature, thought it "thoroughly settled that, under our Constitutions, State and Federal, a legislature can not exercise the functions of a convention—can not in other words, take upon itself the duty of framing, amending, or suspending the operation of the fundamental law." [48] Dodd believes that a new constitution may be proposed in the guise of amendment ". . . where the legislature is not restricted as to the number or character of amendments which it may propose, but precedent is against the exercise of such power, although in Rhode Island, this is the only way of obtaining a com-

[44] Hoar, *op. cit.*, 92.
[45] *Ibid.*, 93.
[46] *Ellingham v. Dye,* 178 Ind. 336 (1912).
[47] Quoted in J. M. Mathews and C. A. Berdahl, *Documents and Readings in American Government,* 562-567 (1928).
[48] Quoted in Hoar, *op. cit.*, 84.

plete constitutional revision." [49] With the exception of the North Dakota opinion, the courts and writers are fairly well agreed that the legislature can not exercise the functions of a constitutional convention.

*Submission of the Convention's Work.*—If the convention act prescribes the procedure to be followed in submitting its work to the people, that method governs, although there have been exceptions to this rule.[50] "There are no recorded instances of a convention refusing to submit the fruit of its labors to the people when required by express constitutional provision." [51] The general rule is that, even where the convention act fails to state how the convention shall submit its work, submission shall be made to the people. Since in Texas the people have reserved to themselves the right to change or alter their fundamental law, a constitutional convention would be obliged to submit its work to the people, if no other means had been prescribed, for the new ". . . constitution prepared by a convention derives its force from the action of the people and not from that of the legislature which may have issued the call for the convention." [52]

## PROBLEMS BEFORE A TEXAS CONVENTION

If a constitutional convention should be called in Texas, what are some of the subjects which it would have to deal with? Problems of administrative reorganization, the short ballot, civil service reform, and accounting control of State expenditures are pressing for solution. Judicial reform is in its infancy. Legislative organization, representation, procedure, the initiative, referendum, and recall, municipal home rule and the reorganization of county government need consideration. Newer problems of elections and suffrage, of education, of health, of prison management and public welfare, of taxation, and the regulation of business corporations and labor, would occupy a prominent place on the convention's agenda. The administration and financing of a State system of public highways is one of the most important problems before the people. Public utility regulation looms as a major governmental problem. The conservation of the natural resources of the State, the administration of the public lands, and the operation of the homestead provisions of the Constitution should have careful study. Consideration should

[49] Dodd, *op. cit.*, 260.
[50] Hoar, *op. cit.*, 194.
[51] *Idem.*
[52] 6 *R. C. L.* 28 (1915).

also be given to the method of amending and revising the Constitution.

To prepare effectively for the making of a new constitution special provision has been made in advance in a number of states, including Massachusetts, New York, and Illinois. In Massachusetts a commission was appointed under act of the General Court to compile data and material for the use of the convention. A number of specialists in government and law were engaged and short bulletins on a wide variety of subjects were prepared and placed at the disposal of the members of the convention. Technical assistance to the committees of the convention was rendered by the members of the commission.[53]

Some work of this nature has been done in Texas, but much remains to be accomplished. Provision should be made by the Legislature, before the calling of a convention, for an official commission to collect material and to prepare information in convenient and intelligible form for the use of the members of the convention. The small expenditure involved would be amply justified by the results.

## REFERENCES

The best books dealing with the general subject of the amendment and revision of state constitutions are: J. A. Jameson, *The Constitutional Convention* (1867); W. F. Dodd, *The Revision and Amendment of State Constitutions* (1910); R. S. Hoar, *Constitutional Conventions* (1919); and J. Q. Dealey, *Growth of American State Constitutions* (1915). The material on the amendment of the Texas Constitution is somewhat scattered. The student should consult the legislative journals and laws, the records in the Secretary of State's office, and the biennial reports of the Attorney-General. The *Texas Almanac, Texas Weekly,* and daily newspapers may be consulted for certain statistical material. The *Dallas Morning News* has published numerous articles and editorials on the subject, most of them from the pens of the late Tom Finty, Jr., and Alonzo Wasson. A thoughtful discussion of the problem of a constitutional convention is found in Cecil H. Tolbert, *A Proposed Constitutional Convention for Texas* (Master's Thesis, University of Texas, 1930).

[53] "Report of the Commission to Compile Information and Data for the Use of the Constitutional Convention," Bulletins for the Constitutional Convention, No. 37, 595-613 (1917-1918).

# CHAPTER III

## THE STATE LEGISLATURE

The Legislature is one of the three coördinate branches of the State Government. Its primary function is the formulation of policy, and by the exercise of this power it assumes in reality a position of ascendency over the other two departments. It determines what services the government is to render, but in doing so it must fix the organization and procedure to be used in carrying out the legislative will, and often has a certain control over the personnel which executes its policies. By its power of investigation it may make sure that the practice of the administration is in harmony with its policies. It occupies, therefore, a position somewhat analogous to that of the board of directors of a corporation. Its organization, procedure, and powers are the result of a long evolution of representative institutions, and it is the chief instrument by which the people rule.

### ORGANIZATION

*The Bicameral System.*—The Constitution provides that the legislative power of Texas shall be vested in a Senate and House of Representatives, which together shall be styled "The Legislature of the State of Texas." [1] Texas, like all the American states, has adopted the bicameral principle as a feature of the system of checks and balances. Without question it has tended to minimize some of the evils of hasty legislation by giving opportunity for second thought, but it has resulted also in friction and unnecessary delays. The value of the bicameral plan was questioned as early as the period of William Penn and Benjamin Franklin. Franklin is said to have compared a double-chambered legislature to a cart with a horse hitched to each end, both pulling in opposite directions.[2] In recent years there has been a movement to abolish the two-cham-

[1] *Constitution,* Art. III, sec. 1.
[2] J. M. Mathews and C. A. Berdahl, *Documents and Readings in American Government,* 655 (1928).

ber system. The governors of Arizona, Washington, and Kansas, in 1913, and of South Dakota in 1926, recommended constitutional amendments for a unicameral legislature. In Oregon the question of the abolition of the Senate was submitted to the people in 1912 and again in 1914; the same year Oklahoma rejected an amendment to the Constitution providing for the unicameral plan by a vote of 94,600 to 71,700. In Nebraska, a joint legislative committee made a report favoring the establishment of a single chamber with a limited membership.[3]

"Nothing is more common," said the committee report, "than for one house to pass a bill and for the members who voted for it to urge the other house to defeat it, and for a little group of members in one house to hold up legislation for the other house until they extort from it what they demand." "Deliberation and reflection do not now mark the work of the two house legislature, which passes most of its legislation the last ten days of the session. A smaller body with a more direct responsibility upon each member arising therefrom, will tend to greater deliberation and reflection than the present system." [4] The Model State Constitution prepared by the National Municipal League provides for a single-chambered legislature.[5]

*Basis of Apportionment and Representation.*—The question of apportionment of state senators and representatives is a fundamental problem. The two principles followed in apportionment are population and territory. In about one-third of the states the constitutions provide that each county shall have at least one representative in the lower house. This provision operates to restrict the representation of the urban counties and gives undue representation to the sparsely populated counties.[6] The constitutions of most of the New England states provide that numerical equality shall prevail in the apportionment of one house, and geographical equality in the other.[7]

Representation in the House of Representatives of the Texas Legislature is based on population, but apportionment of Senators is made upon the basis of the number of qualified electors. The State is divided into thirty-one senatorial districts of contiguous

[3] F. A. Ogg and P. O. Ray, *Introduction to American Government,* 4th ed., 690 (1931).
[4] Nebraska Legislative Reference Bureau, *Bulletin,* No. 4, 17 (1914).
[5] *A Model State Constitution,* Secs. 13-32 (1922).
[6] J. M. Mathews, *American State Government,* 159 (1924).
[7] C. A. Beard, *American Government and Politics,* 6th ed., 560 (1931).

territory, each Senator representing about 38,707 electors. Each district elects one Senator, and no single county is entitled to more than one Senator.[8] Dallas, Harris, and Tarrant counties have one Senator each; the Senator from the least populated section of the State represents twenty-seven counties.[9]

The members of the House of Representatives are apportioned among the several counties according to population. When two or more counties are required to make up the ratio of representation, such counties must be contiguous. In case of a surplus a county may be joined with a contiguous county or counties to elect a "flotorial" Representative.[10] Under the present apportionment Dallas County has six Representatives; one of them, however, represents Kaufman and Rockwall counties; Bexar County has five; Harris County, five; Tarrant County, four; Wichita County, three (with one member also representing Wilbarger County); and Travis County has two. The maximum number of counties in one district is thirteen. Each member represents an average of about 40,153 people. In the Forty-second Legislature a proposed amendment to the Constitution providing that counties having 500,000 or less population should not have more than five members in the House of Representatives and one Representative for each additional 100,000 population was adopted by the lower house, but failed in the Senate.[11]

In the American states there has been a movement to secure more equitable political representation for all groups. Efforts in this direction include the operation of cumulative voting in Illinois, proportional representation, and the representation of occupational groups. The critics of these plans contend that they involve many practical difficulties, and that the various occupational groups secure representation under the present system.[12]

The Constitution makes it obligatory upon the Legislature to reapportion the State after each decennial census. The last appor-

[8] *Constitution,* Art. III, sec. 25.
[9] *Legislative Manual,* 42d Leg., 530-532 (1931).
[10] *Constitution,* Art. III, sec. 26.
[11] *Texas Weekly,* VII, 6-7 (May 2, 1931).
[12] The chief occupational groups in the House of the Forty-second Legislature were: lawyers, 68; farmers and stockmen, 28; editors and publishers, 7; insurance, 8; salesmen, 5; merchants, 5; students, 4; teachers, 4; retired, 3; with the remainder scattering. In the Senate, there were 18 lawyers, 3 farmers, 2 bankers, and one of each of the following: merchant, physician, automobile dealer, teacher, real estate dealer, publisher and editor, businessman and life insurance agent.—*Legislative Manual,* 42d Leg., 520-523, 530-532 (1931).

tionment was made in 1921. The people of West Texas complained of a lack of representation and so additional Representatives were added. This reapportionment gave the House its constitutional limit. Since this is true, it remains a question of doubt as to the time of the next reapportionment. There is no way in which the performance of this duty can be enforced in the courts when the Legislature fails to carry out the constitutional mandate. This is illustrated by the fact that there was no reapportionment for the Senate from 1901 to 1921. The question of reapportionment must be faced again soon by the Legislature. The newly settled and growing sections of the State will demand a proportionate share of the members of the Legislature.[13]

*Differences between the Houses.*—The principal differences between the two houses of the Texas Legislature are in size, term, and the legislative experience of the members. The Senate also possesses certain powers foreign to the House such as the power to try cases of impeachment and to consent to appointments by the Governor.

The Senate is much the smaller body; it must consist of thirty-one members, and may never be increased above that number. The first House of Representatives under the Constitution of 1876 had a membership of ninety-three, but because of the increase in population the membership at present is one hundred and fifty, which is the maximum number allowed under the Constitution.[14] The smaller membership of the Senate adds to its dignity and makes it more of a deliberative body.

Senators are elected for four-year terms and Representatives for two years. One-half of the Senators are elected at a single election, the other half being composed of "hold-over" members.[15] As a general rule, the Senators have had greater legislative experience than the members of the House, the majority of Senators having served an apprenticeship in the House before being elected to the Senate.[16]

The Constitution does not specify any special training as a quali-

[13] See series of articles by Harry Benge Crozier dealing with the problem of reapportionment, which appeared in the *Dallas Morning News,* November 11, 12, 13, 14, 1929.

[14] *Constitution,* Art. III, sec. 2.

[15] *Ibid.,* Art. III, secs. 3, 4.

[16] In the House of the Forty-second Legislature there were 57 members without previous legislative experience. Only 2 members of the Senate had had no legislative experience; 17 had served in the House.—*Legislative Manual,* 42d Leg., 520-523, 530-532 (1931).

fication for membership in either house. Members of the Legislature must be citizens of the United States, qualified electors of the State, and residents of the district which they represent for at least one year preceding their election to office. A Senator must have resided in the State for five years next preceding his election and must have attained the age of twenty-six years. In the case of Representatives, the residence requirement is two years, and the age requirement is twenty-one.[17]

For obvious reasons members are ineligible to hold any office of profit which has been created during their term; they can not be interested either directly or indirectly in any contracts let by the State or any county.[18]

The law requires that a candidate for the Legislature must file a statement of his intention to make the race for the office with the party committee of each county in his district at least thirty days prior to the primary. In case several are in the race and no candidate receives a majority of the votes cast, the two candidates receiving the greatest number of votes enter the second or "run-off" primary. The candidate who receives the greater number of votes in the second primary is nominated. The nomination is equivalent to election, the Democratic nominee nearly always being elected in the general election.

*Method of Procedure; Compensation.*—The constitutional provisions in force before 1930 required the Legislature to meet biennially in regular sessions. No limit was placed upon the length of regular sessions, but the "per diem" of members was reduced from five dollars to two dollars after the first sixty days. Practically, this resulted in the adjournment of the regular sessions shortly after sixty days, and, to secure the passage of appropriation bills and other unfinished legislation, the Governor was forced to call numerous special sessions.

In order to correct the special session "evil," to secure greater deliberation in procedure, and the election of a better qualified membership by payment of a higher salary, with resulting efficiency in performance, the Forty-first Legislature submitted two constitutional amendments, which were adopted by the voters at the general election in November, 1930. The first of the amendments sought to provide a new method of procedure for regular sessions.

[17] *Constitution,* Art. III, sec. 6, 7.
[18] *Ibid.,* Art. III, sec. 18.

The Legislature shall meet every two years at such time as may be provided by law and at other times when convened by the Governor. When convened in regular session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided that during the succeeding thirty days of the regular session of the Legislature the various committees of each House shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor; provided further that during the following sixty days the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided however, either House may otherwise determine its order of business by an affirmative vote of four-fifths of its membership.

By the accompanying amendment the "per diem" of members was fixed at "not exceeding $10.00 per day for the first 120 days of each session and after that not exceeding $5.00 per day for the remainder of the session." Mileage in going to and returning from the seat of government was fixed at not to exceed ten cents per mile, whereas formerly twenty cents per mile had been allowed. Members are not entitled to mileage for any extra session which may be called within one day after the adjournment of a regular or called session.[19]

The operation of the two constitutional amendments is the subject of diverse comment. Some observers have criticized the Legislature for deviation in procedure from that fixed by the amendments, while others have insisted that the spirit of the new requirements has been observed.[20] The cost of legislative sessions has undoubtedly increased: the Forty-third Legislature, 1933, appropriated $500,000 for the payment of the mileage and "per diem" of its members and officers and employees, and $125,000 for contingent expenses. There seems to be no great decline in the number of special sessions, although the disturbed economic conditions may explain this.

*Special Sessions.*—On extraordinary occasions the Governor may convene the Legislature in special session. Duration of such sessions is limited to thirty days, and the Legislature can consider

[19] *Ibid.*, Art. III, secs. 5, 24; *Legislative Manual,* 42d Leg., 498-519 (1931).

[20] *Dallas Morning News,* January 27, February 1, 8, 1931; January 12, 25, 31, February 2, 3, 1933; *Texas Weekly,* VII, 2 (April 4, 1931).

only those subjects designated in the proclamation of the Governor calling the session or submitted by him after the body meets. Members are entitled to a "per diem" of ten dollars and mileage for special sessions.[21]

### POWERS AND LIMITATIONS

*Constituent Power.*—One of the most important powers of the Legislature is the power to propose amendments to the Constitution. Amendments may be proposed at the regular sessions only, and require a vote of two-thirds of all the members elected to each house. They become part of the Constitution if ratified by a majority vote at the polls.

*Lawmaking.*—Section 42 of Article III of the Constitution empowers the Legislature to pass such laws as may be necessary to carry into effect the provisions of the Constitution. In carrying out this provision, it enacts laws on many subjects, and a complete presentation of its sphere of activity in this connection is impossible here. Among the subjects to which this power extends may be mentioned the definition and punishment of crimes, civil rights, judicial organization and procedure, public lands, contracts, trade, business, the professions, local government, public health, education, charity, marriage, divorce, domestic relations, elections, and the regulation of corporations in so far as their business is not interstate in character.

The police power of the State has grown to enormous proportions, and it is difficult to define its limits. The police power is the inherent power of the government to pass such laws as may be deemed necessary for its own protection and to secure the safety, comfort, and general welfare of its citizens. In general it includes all legislation designed to promote social welfare. Pure food and drug acts; the regulation of hours and conditions of employment of women and children; regulation of theatres and markets; the licensing of physicians, druggists, and lawyers; the control of trusts; quarantine laws; workmen's compensation laws; the conservation of natural resources—all these and many other matters come within the bounds of the police power of the State. The police power can not be used for the benefit of particular individuals or classes; it must not be arbitrary or unreasonable and its main object must be the public good.

*Control over the Administration.*—The Texas Legislature is not

[21] *Constitution,* Art. III, secs. 24, 40, Art. IV, sec. 8.

merely a lawmaking body; it acts as an agency of administrative control. In this capacity it determines the activities to be engaged in, provides for the organization of boards and commissions, and outlines their functions, determines the amount of money to be used in the carrying on of the various activities, and exercises general supervision over all the services of the government. Practically all administrative agencies make reports to the Governor and the Legislature.

*Non-legislative Functions.*—One of the chief fields in which the Senate exercises executive power is in its authority to pass upon appointments by the Governor. The consent of the Senate is required for all appointments made by the Governor.[22] When the upper chamber acts on the nominations of the Governor, it meets in executive session, and remarks touching the character and qualifications of the nominee are kept secret.[23] The vast majority of appointments are accepted by the Senate with little hesitation.

A legislative investigation is essentially a judicial act. The Constitution provides that "The Legislature shall pass efficient laws facilitating the investigation of breaches of trust and duty by all custodians of public funds and providing for their suspension from office on reasonable cause shown, and for the appointment of temporary incumbents of their offices during such suspension." [24] Investigation proceedings are instituted by concurrent resolution. The resolution states the reasons for the inquiry and on some occasions it recites the charges made against the agency under investigation. It also defines the powers and duties of the investigating committee. The committee formulates its own rules of procedure and sets its hours of meeting and adjournment. It has the power to issue subpœnas and compel attendance of witnesses; to administer oaths; and to inspect all books, records, and files of the department in question. It has a right to elect its own chairman and perfect its own organization; and to employ and compensate all necessary experts, stenographers, clerks, auditors, and other necessary employees. The Attorney-General is usually called upon to assist the committee in its activities. The committee is required to keep a record of its proceedings and to report its findings and recommendations to the houses for consideration.[25]

[22] *Ibid.*, Art. IV, sec. 12.
[23] *Legislative Manual,* 42d Leg., 480 (1931).
[24] *Constitution,* Art. IV, sec. 25.
[25] A typical resolution initiating an investigation may be found in *Laws,* 41st Leg., reg. sess., 739-743 (1929).

The Legislature arranges for the inauguration of the Governor and Lieutenant-Governor by concurrent resolution. The two houses meet in joint session in the Hall of the House of Representatives at high noon on Tuesday after the organization of the Legislature for the purpose of witnessing the administering of the oath of office to the Governor-elect and Lieutenant-Governor-elect.[26] After the Governor is sworn in, he delivers his inaugural address, in which he outlines his policies and solicits the coöperation of members of the Legislature in carrying out his program.

The Constitution provides that the Governor, Lieutenant-Governor, Comptroller, Treasurer, Commissioner of the General Land Office, and the Attorney-General shall be elected by the people. The returns of every election for these officials are sent to the Secretary of State, who delivers those of the Governor and Lieutenant-Governor to the Speaker of the House of Representatives during the first week of the session, and they are canvassed in the presence of both houses of the Legislature. In case of a tie in any of the contests, the Legislature has the right to make a choice. Contested elections in the above offices are determined by both houses in joint session.[27]

The members of the Legislature have certain privileges granted to them as a result of their connection with the government. They are exempt from arrest during the sessions of the Legislature, and in going to and from the session, except in cases of treason, felony, or breach of the peace.[28] Since the members are immune from arrest, each house has the authority to punish its members for disorderly conduct, and with the consent of two-thirds, to expel a member, but not a second time for the same offense.[29] Each house has the authority to judge the qualifications and election of its own members, and under the Constitution the Legislature has a right to pass laws relating to the determination of contested elections.[30]

Another important judicial power of the Legislature is that of impeachment. All officers of the Executive Department, the judges of the Supreme Court, Courts of Appeal, and district courts are subject to impeachment. Other officers have been added to this list by the Legislature. The penalty is limited to removal from office and disqualification from holding any office of honor, trust, or profit. If the offender has violated the criminal laws of the State,

[26] *Constitution,* Art. IV, sec. 4.
[27] *Ibid.,* Art. IV, secs. 1-4.
[28] *Ibid.,* Art. III, sec. 14.
[29] *Ibid.,* Art. III, sec. 11.
[30] *Ibid.,* Art. III, sec. 8.

he is also subject to trial and punishment in the regular courts. The procedure is for the House of Representatives to investigate the conduct of officials against whom complaints have been made and if it finds them justified it formulates the charges in a series of articles of impeachment. The House considers the articles, and after approval by a majority of those present, a committee is appointed to prosecute the charges before the Senate. The Senate votes on each article separately, two-thirds of those present being necessary for conviction. The process of impeachment is cumbersome, and has been used on very few occasions.

The judges of the Supreme Court, Courts of Appeal, and district courts are subject to removal by address. The Governor, on the address of two-thirds of each house of the Legislature, shall remove the above-mentioned judges for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment. In such instances the causes of removal must be stated in the address, and the judge has a right to a hearing before any vote is taken.[31]

*Limitations.*—The Constitution of Texas places many restrictions on legislative powers. These limitations deal with financial matters, methods of procedure, and local and special laws. The bill of rights also operates as a restriction on legislative powers and as a guarantee of the fundamental rights of person and property.

The financial restrictions define the purposes for which taxes may be levied and the purposes for which debts may be created. The credit of the State may not be extended by the Legislature to any person, association, or corporation, and the power to tax corporations can not be surrendered or suspended. Taxes may be collected for public purposes only and must be equal and uniform. The Constitution confines appropriations to a two-year period, forbids the borrowing or diversion of special funds, and prohibits the exemption from taxation of the property of the inhabitants of counties and cities, except by a two-thirds vote of each house of the Legislature.[32] The power to levy taxes is limited to the following purposes: the payment of interest on bonded debt, the erection and repair of public buildings, the payment of the sinking fund, the support of public schools and higher institutions of learning, the payment of the cost of collecting and assessing the revenue, the pay-

[31] *Constitution,* Art. XV, secs. 1-8.
[32] *Ibid.,* Art. III, secs. 49-56; Art. VIII, secs. 1, 3, 4, 6, 7, 10.

ment of all employees of the State Government, the support of eleemosynary institutions, the enforcement of quarantine regulations, and the protection of the frontier.[33]

The limitations on procedure are enumerated at length in the Constitution. Two-thirds of each house constitutes a quorum. Each house must keep a journal of its proceedings, and yeas and nays must be entered in the journal on request of three members. Bills must be read on three several days, but in case of imperative public necessity, four-fifths of the house in which the bill may be pending may suspend this rule. All bills for raising revenue originate in the House of Representatives, but the Senate may amend or reject them. After a bill has been considered and defeated by either house, no bill containing the same substance may be considered during the same session. Bills may contain only one subject, and that subject must be expressed in the title.[34]

Restrictions with regard to special and local laws are even more numerous than restrictions with regard to procedure. The Legislature is forbidden to pass any local or special law with regard to a long list of subjects, included among which are: the creation, extension, and impairment of liens; regulating the affairs of counties, cities, towns, or school districts; changing the venue in civil and criminal cases; locating or changing county seats; regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding; fixing the rate of interest; and giving effect to invalid wills or deeds. In all cases where a general law can be made applicable, no local or special law may be enacted.[35]

Twenty states have further restricted the legislative powers through the adoption of the initiative and referendum. These are devices of direct legislation employed to secure legislation on matters with respect to which the legislative bodies have failed or declined to act. Texas uses only the compulsory referendum on constitutional amendments. The power of the Legislature has suffered by the inclusion in the Constitution of many matters that are legislative in character.

### PROCEDURE

*Organization for Work.*—In the initial organization of the House of Representatives, the Secretary of State presides until

[33] *Constitution,* Art. III, sec. 48.
[34] *Ibid.,* Art. III, secs. 10, 12, 29-41.
[35] *Ibid.,* Art. III, sec. 56.

the election of the presiding officer by the House, who is called the Speaker. He exerts more influence over legislation than any other individual member of the Legislature. By his power of recognition he may recognize a member who addresses the chair and allow him the privilege of the floor. It is possible for the Speaker to use this power for political purposes, and recognize only such persons as he pleases. "He may use this to give advantage to those of the same opinion as himself by according them recognition, and may punish a refractory member by persistently refusing to recognize him and thereby deny him the privilege of speaking or of offering motions." [36]

Included under the Speaker's power of appointment is his power to appoint an Acting Speaker in addition to the appointment of regular committees. He may make up the committees to suit his own views and to promote his own policies. "By appointing his most trusted associates to the chairmanship of the most important committees, he determines the character of the party leadership." [37]

One of the most important functions of the Speaker is to apply parliamentary law and to enforce and pass upon rules of the House. Dodds states that a clever Speaker can frequently avoid a direct vote on a measure, which he wishes to kill, by skillful rulings on incidental motions or on points of order.[38] Any member, however, may appeal to the House from the ruling of the Speaker; in most instances of appeal, the ruling of the chair is sustained. Luce answers Dodds's criticism by saying that "anything like habitual distortion either of special rules or general parliamentary law would result in chaos, and chaos is not characteristic of our assemblies." [39]

A fourth important prerogative of the Speaker is the power of reference. He refers a bill to the committee to which he thinks it should be assigned. In the exercise of this authority, he may determine the fate of an important measure. A great deal of legislation rests with the committees; they may report a bill out favorably or they may kill it in the committee room.

Pending organization, the Senate is presided over by the outgoing Lieutenant-Governor. The powers of the Lieutenant-Governor, as President of the Senate, are almost as extensive as those

[36] F. G. Bates and O. P. Field, *State Government,* 153 (1928).
[37] A. N. Holcombe, *State Government,* 3d ed., 295 (1931).
[38] H. W. Dodds, *Procedure in State Legislatures,* 102 (1918).
[39] R. Luce, *Legislative Procedure,* 463 (1922).

of the Speaker of the House. The Senate elects a President pro tempore, who performs the duties of President in case of the absence or disability of that official. Other officials and employees selected by the Senate and House include the secretary (called chief clerk in the House), journal clerks, calendar clerks, postmistress, sergeant-at-arms, engrossing clerks, enrolling clerks, doorkeepers, chaplains, parliamentarians, and pages.

*Rules.*—After the selection of the officials, each house adopts its own rules of procedure. The two houses also adopt joint rules for guidance in matters affecting the business of both. The rules are too complicated to permit of full explanation here. Only experienced members understand them, and frequently it is very difficult for the presiding officer to interpret them. Some of the more important rules deal with duties and rights of presiding officers and other officials, the work of committees, questions of privilege, decorum and debate, voting, motions, previous questions, resolutions, bills, amendments, committee of the whole, order of business, and suspension of rules.

*Steps in Passage of Bills.*—The rules provide for the definite progress of a bill through the Legislature. The actual procedure does not differ very greatly in the two houses. House bills may be introduced by filing with the chief clerk or they may be offered from the floor. The clerk reads the caption of the bill, after which it is referred by the Speaker to the appropriate committee. All bills must be reported by the committees within six days, unless the House consents to an extension of the time limit. The committee may pass the bill out in its original form, amend it, or even offer a substitute measure. When it is favorably reported, it is printed and placed on the calendar. Bills on which unfavorable action is taken by the committee may be printed and placed on the calendar by order of the House.

The House considers the bill on second reading; on this occasion it may be read in full. It is then debated and such amendments are added as are favorably passed on by the House. If it fails to pass, it may be brought up for reconsideration in accordance with the rules; if a majority vote is recorded for the bill it is "passed to engrossment." The measure then comes up for third reading and final passage. During third reading it can be amended only by a two-thirds vote. It must be read on three several days, unless it carries the emergency clause, in which

case the constitutional rule may be suspended by a four-fifths vote.

The measure is then sent to the Senate, where it goes through the same procedure. If the Senate passes it without amendments, it comes back to the House and goes to the enrolling clerk. If the Senate adds amendments and the House fails to agree, a conference committee is appointed to adjust the differences. The conference committee makes its report, and if the report is accepted by both houses, the bill is sent to the enrolling room, and is later examined by the committee on enrolled bills. The measure is read by caption in both houses, signed by the Speaker and the President of the Senate, and transmitted to the Governor. In case the Governor vetoes the bill, it may be passed over his veto by a two-thirds vote of those present in each house. All bills become law in ninety days after the adjournment of the session at which they were enacted unless they contain the emergency clause, and are passed by a two-thirds vote of all the members elected to each house, in which case they become effective with the Governor's signature.[40]

Resolutions go through the same procedure as bills. Resolutions are of three types: simple, concurrent, and joint. A simple resolution is a resolution which affects only the house which adopts it; it does not require the Governor's signature. Simple resolutions deal with such matters as adoption of rules of procedure, calls for information from administrative departments, and invitations asking a former member to address the house. Both concurrent and joint resolutions must be passed by both houses and submitted to the Governor. Concurrent resolutions deal with such matters as the acceptance of an act of Congress, the adoption of joint rules, and the time for adjournment. Proposed amendments to the Constitution take the form of a joint resolution.

The electric voting machine in the House is a great aid in speeding up procedure. Ordinarily it takes a clerk at least fifteen minutes to call the roll and record the vote in the House. But with the aid of the machine the average time required is only forty-five seconds. Use of the voting machine results in a tendency to destroy individual initiative; a member neither interested nor familiar with the bill in question sometimes watches the lights and votes with the majority; consequently, the vote does not always express the opinion

[40] *Legislative Manual,* 42d Leg., 435-440 (1931).

of the individual. Of course, the same thing could occur under the old method.

*Committee System.*—Dodds says that our state legislatures have lost much of their deliberative character, and that the real work upon which the quality of legislation depends is fundamentally the work of the committees. "With them rests the burden of sifting from the innumerable bills presented those worthy of consideration by the whole house, and upon them is laid the duty of revising, amending, and presenting these measures in what is usually their final form. They are the only agents, as yet developed in this country for this purpose, upon which responsibility can be lodged." [41]

There are several types of committees: special committees, committee of the whole, standing committees, and joint committees. Special committees are appointed for a specific purpose—as committees of conference or an investigating committee. They are frequently employed to take charge of celebrations and are very often joint committees.

The House goes into the committee of the whole during the discussion of revenue and appropriation measures. In forming the committee of the whole, the Speaker calls some other member to the chair; the bill is read and amendments are considered. When the debate has closed and all amendments have been voted upon, the Speaker resumes the chair and the committee reports its recommendation back to the House. The motion is then on the adoption of the recommendation.[42]

In the House there are thirty-eight standing committees, and in the Senate there are thirty-six. The size of the Senate committees is determined by the President; the size of the House committees is determined by the rules of the House at five, eleven, and twenty-one members. Several members of the House serve on five committees, and some Senators serve on as many as ten committees.[43]

Joint committees are appointed as either select or standing committees to consider subjects on which united action is desirable. In Massachusetts and other New England states all standing committees are joint committees. It would be an important advance in procedure for Texas to adopt the joint committee system. The out-

[41] Dodds, *op. cit.*, 36.
[42] *Legislative Manual*, 42d Leg., 416-418 (1931).
[43] *Ibid.*, 339-346, 476-479, 525-529, 534-537.

standing advantages of this system are that duplication of work and bills is avoided; the importance of the committee is enhanced; committee meetings are of greater significance; and those persons who are interested in proposed legislation do not have to appear twice before separate committees.

The committee load is very unequally distributed. The most important committees have too much to do and some committees have practically nothing to do. The most heavily burdened committees of the House in recent sessions have been the committees on criminal jurisprudence, judiciary, appropriations, state affairs, revenue and taxation, highways and motor traffic, and education. With regard to the crowded calendar of some committees and the absolute uselessness of others, Dodds says:

> Such an endless multiplication of committees would of course be impossible if it were not that the burden of work is confined to a few of the more important while others meet but irregularly throughout the session. Everywhere the committees on appropriations, judiciary, and municipal affairs will be found crowded with work. Of less importance, although with plenty to do, will be found committees dealing with agriculture, banking, county affairs, education, corporations, railroads, fish and game, and roads and bridges. Then follow the committees whose work is almost negligible. . . . Of the thirty-eight committees of the Ohio House of 1915 there were sixteen which considered less than ten bills each. . . . A few committees are overwhelmed; others never meet.[44]

The chief function of the committee is to obtain all possible information on subjects under consideration. In order to accomplish this purpose, public hearings are granted by the chairman. Administrative officials and citizens appear before the committee and speak for or against pending legislation. These public hearings could be productive of great good, but in most instances the results are not beneficial. While far from perfect, the committee system has the advantage of bringing the individual citizen in contact with the lawmaking body of the government.

### CRITICISMS AND SUGGESTIONS

*Inexperience of Members.*—"There is hardly any kind of intellectual work," said John Stuart Mill, "which so much needs to be done not only by experienced and exercised minds, but by minds trained to the task through long and laborious study as the business

[44] Dodds, *op. cit.*, 40-41.

of making laws." [45] It is seldom that the membership of a legislature comes up to the standard set by Mill. Many of the legislators have not enjoyed a training and experience to qualify them for the "business of making laws." Members of the Texas House of Representatives ordinarily serve no more than two terms, while Senators usually retire after two four-year terms.

In bettering the legislative product, increasing the ability of legislators is fundamental. Changed electoral methods, such as proportional representation, have been suggested. Undoubtedly the restoration of the Legislature and its members to a position of power and dignity would attract our most able citizens to the service of the State in the Legislature.

*Leadership.*—Directly related to the problem of personnel is that of leadership. "The legislatures . . . have done nothing to develop from among themselves leaders who shall be responsible as such to the people, and the public is suffering from the resulting aimlessness of legislative activities." [46] The Texas Legislature is no exception to this statement. The guidance and direction which the Legislature does receive is from the Speaker, the President of the Senate, and the chairmen of the important committees. Occasionally blocs are organized under the leadership of outstanding members, but these blocs are usually short-lived. The prohibition and anti-prohibition blocs, the education bloc, and the farm bloc have at times been very important influences in legislation. Occasionally the Legislature accepts the leadership of the Governor, and he becomes a positive force in legislative matters. Under these circumstances, administration floor leaders working under the direction of the Governor make an effort to carry out the Governor's policies. A Lieutenant-Governor once made the statement that the failure on the part of the Texas Legislature to carry out a constructive program with regard to the major problems under consideration was due to absence of effective leadership.

*The Question of Deliberation.*—It has been stated that the Texas Legislature is no longer a deliberative body; that careful consideration of important measures is almost unknown. This rush is especially noticeable at the end of the session, when hasty and ill-considered legislation is turned out in enormous quantities. Some states have taken steps to avoid this rush at the end of the session. In Massachusetts the joint committee system and the rules facilitate

[45] J. S. Mill, *Representative Government* (Everyman ed.), 235 (1922).
[46] Dodds, *op. cit.*, 100.

the prompt handling of all measures. The Legislature starts its session in January. Committees must report all measures not later than the second Wednesday in March. Two states, California and West Virginia, have adopted the "split session." Almost all bills are introduced during the first thirty days; the Legislature then takes a recess of thirty days, which allows time for the committees and members to study the bills very carefully. In California, no new bills can be introduced after the Legislature reconvenes, without the consent of three-fourths of the members.

It was the intention of the framers of the constitutional amendments of 1930 that they should provide a method of procedure which would insure more deliberation in the passage of laws. But the Legislature has found the methods prescribed by the amendments unworkable in practice and has liberalized its rules by the use of the "four-fifths" proviso. Generally speaking, there has been no noticeable change from the procedure formerly followed.[47]

*Committee Work Perfunctory.*—One of the outstanding defects of legislation in Texas is the committee system. Committee meetings are not allowed during sessions of the House. Many members hold appointments on several committees, and in many instances a member reports for roll call on one committee and then attends the session of the committee in which he is most interested. Careful consideration of a measure is unusual. Hearings are held, but in a great many instances interested parties do not attend, very little publicity being given to the time and place of meeting. Meetings are held during the noon recess, after adjournment in the afternoon, and at night. A President pro tempore of the Senate expressed very clearly the prevailing opinion of the work of committees when he said: "The operation of the committee system is disgusting. I have attended but one satisfactory committee meeting during the entire session." Of course, Texas is not alone in this.

*The Lobby.*—In general the lobby includes all persons who frequent legislative halls for the purpose of influencing legislation. An eminent authority refers to the professional lobbyists as "a class of adjunct lawmakers, sometimes called the third chamber, under pay of persons, societies, or interested corporations." [48] In some of its phases, lobbying is not objectionable; it is even essential and necessary under our present system of legislation. This is espe-

[47] *Dallas Morning News,* January 25, 31, February 2, 1933.

[48] P. S. Reinsch, *American Legislatures and Legislative Methods,* 290 (1907).

cially true of the lobbyist who represents the citizenship and is not a paid agent of special interests.

Private interests seek to influence pending legislation; they employ the best talent available to argue their cases before committees; they even draft bills and secure their introduction. Corporations have a right to influence legislation in a legitimate way. Many states have passed laws regulating the activities of the lobby. The Wisconsin law is probably one of the most effective pieces of legislation on the subject.[49] It requires the lobbyist to register with the Secretary of State, giving his name, occupation and residence, the name and business address of his employer, the length of time that employment is to continue, and the special subject or subjects of legislation to which the employment relates. A stringent anti-lobbying law was introduced in the Forty-first Legislature of Texas, but the committee failed to make a favorable report and the bill never came up for discussion in either house. Several other states have passed laws against the lobby, but very little has been accomplished, and the lobby continues to be "one of the numerous unsolved problems of American state government." [50]

*Legislative Reference Bureau and Bill Drafting.*—Texas, following the example of other states, has established a legislative reference division of the State Library as an aid in securing information on various subjects of legislation. Its purpose is to place at the disposal of the legislator such information as he may require for any legislative proposal that he may have in view.

The statute creating the legislative reference library requires the librarian to assist members of the Legislature in drafting bills and resolutions, but owing to the lack of an adequate staff this function has never been performed. In a recent study the American Bar Association recommended the establishment of both reference libraries and bill-drafting bureaus.[51] The Texas Senate has employed a former Assistant Attorney-General to aid the Senators in drafting laws. It is hoped that Texas will soon create a regular drafting bureau. This bureau should be a permanent group of experts devoting their entire time and attention to the drafting of measures, and should be at the service of legislators, citizens, associations, and corporations.[52]

[49] *Wisconsin Statutes,* I, 2279-2281 (1925).
[50] Ogg and Ray, *op. cit.,* 745.
[51] C. G. Haines and B. M. Haines, *Principles and Problems of Government,* rev. ed., 327 (1926).
[52] See recommendations of the Joint Legislative Committee on Organization and Economy, *infra,* Ch. V.

*The Governor and the Legislature.*—The relation of the Governor to the Legislature will be discussed in a succeeding chapter. One of the important features of the Model State Constitution may be noted here. It disregards the theory of checks and balances and provides for a closer coördination between the legislature and the executive. It provides that the governor and heads of the executive departments shall be entitled to seats in the legislature and have the privilege of introducing bills and taking part in the discussion of measures, but without the right to vote.[53]

REFERENCES

Among the standard general works on the legislature and legislation are: H. W. Dodds, *Procedure in State Legislatures,* Supplement to the *Annals* (May, 1918); Robert Luce, *Legislative Procedure* (1922) and *Legislative Assemblies* (1924); P. S. Reinsch, *American Legislatures and Legislative Methods* (1907). Chapters on the state legislature are to be found in the general texts on American government and state government. See also Judd and Hall, *The Texas Constitution,* Chs. IV, V. A series of articles by Harry Benge Crozier on the problems of reapportionment has been cited. Original sources on this subject include the *Laws,* the *Journals* of the two houses, and the *Legislative Manual.* The original records of the Legislature are preserved in the office of the Secretary of State. The *Texas Almanac* contains information relating to the personnel of the Legislature, the district which each represents, the population of the districts, etc. Current happenings in the Legislature are chronicled in the larger newspapers of the State, while at the close of each session they usually print a tabulation of all the laws passed by that session. A significant analysis of the legislative process is that by Tom Finty, Jr., "Our Legislative Mills: Texas Makes Haste," *National Municipal Review,* XII, 649-654 (1923).

[53] *A Model State Constitution,* Sec. 47 (1922).

# CHAPTER IV

## THE STATE EXECUTIVE

The Constitution provides that the executive department of the State "shall consist of a Governor, who shall be the Chief Executive Officer of the State; a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office and the Attorney General." [1] In addition to these officers, numerous other officials, boards, and commissions, most of them of statutory origin, belong to what is commonly called the "state administration" and carry into effect the public policy which has been enacted into law.[2] In this chapter we shall deal with the constitutional executive officers, reserving for another chapter the treatment of the State administration.

### THE GOVERNOR

*Election, Term, and Compensation.*—The Governor, as well as the other officers of the executive department, except the Secretary of State, is elected by the qualified voters of the State at the time and places of election for members of the Legislature; i. e., at the general election held on the first Tuesday after the first Monday in November of even-numbered years.[3] Candidates for Governor and other State elective officers are nominated at a primary election held on the fourth Saturday in July of even-numbered years, by political parties that cast one hundred thousand votes or more at the last general election. A political party whose nominee for Governor in the preceding general election received as many as ten thousand and less than one hundred thousand votes has the choice of nominating State, district, and county officers by convention or primary elections. A majority of all the votes cast at the primary election is necessary for the nomination of candidates for State and district offices. If no candidate has a majority, a second primary election is

[1] *Constitution,* Art. IV, sec. 1.
[2] Frank M. Stewart, *Officers, Boards, and Commissions of Texas,* University of Texas Bulletin No. 1854 (1918).
[3] *Constitution,* Art. IV, sec. 2; *Revised Civil Statutes,* I, art. 2930 (1925).

held on the fourth Saturday in August succeeding the first primary, and only the names of the two candidates who received the highest numbers of votes for any office in the first primary are placed on the ballot at the second primary.[4]

Returns of the election for Governor and Lieutenant-Governor are prepared by each county judge, sealed, and transmitted to the capital, directed to the Secretary of State, who delivers them to the Speaker of the House of Representatives as soon as the Speaker is chosen. Committees are appointed by the presiding officers of both houses of the Legislature to tabulate the returns. A report is made at a joint session of the two houses. A plurality is sufficient to elect. If two or more persons have the highest and an equal number of votes, one of them is chosen immediately by joint vote of both houses of the Legislature. Contested elections for the elective executive officers are tried and determined by both houses of the Legislature in joint session. The Governor and Lieutenant-Governor are inaugurated, in the presence of both houses, and with appropriate ceremonies, on the first Tuesday after the organization of the Legislature or as soon thereafter as practicable.[5]

Qualifications required by the Constitution for the office of Governor are: age of thirty years, citizenship of the United States, and residence in the State for at least five years immediately preceding the election. Members of Congress and officers of the United States, of any other state, or of a foreign government are ineligible to the office of Governor or any other office of profit or trust in the State. During his term the Governor may not hold any other office, civil, military, or corporate.[6] The courts, however, have held that such a provision does not prevent the Governor from serving ex officio as a member of a State board.[7]

The term of the Governor is two years, or until his successor is duly installed. There are no constitutional restrictions on eligibility for reëlection, but custom has fixed the number of terms at two. Opposition for reëlection is frequent, but seldom successful. While the Legislature is in session the Governor resides where its sessions are held, and at all other times at the capital, except when by law he may be required or authorized to reside elsewhere.[8]

[4] *Revised Civil Statutes,* I, arts. 3101, 3102, 3154, 3155 (1925); see Ch. IX.
[5] *Constitution,* Art. IV, secs. 3, 4; *Revised Civil Statutes,* I, arts. 3036, 3066 (1925).
[6] *Constitution,* Art. IV, secs. 4, 6; Art. XVI, sec. 12.
[7] *Arnold v. State,* 9 S. W. 120 (1888); *Missouri, Kansas & T. Ry. Co. of Texas v. Shannon,* 100 S. W. 138 (1907).
[8] *Constitution,* Art. IV, secs. 4, 13.

As compensation for his services the Governor receives "an annual salary of $4,000 and no more, and shall have the use and occupation of the Governor's Mansion, fixtures and furniture." [9] This salary is less than that allowed the Governor under several earlier constitutions, and is also less than that allowed by the Legislature for many of the Governor's important appointees. The Legislature has long realized the inadequacy of the compensation, and has repeatedly submitted for popular approval amendments to the Constitution increasing the salary of the Governor and other executive officers. All such amendments have failed. The Governor is not allowed to "practice any profession, and receive compensation, reward, fee, or the promise thereof for the same; nor receive any salary, reward or compensation or the promise thereof from any person or corporation, for any service rendered or performed during the time he is Governor, or to be thereafter rendered or performed." [10]

Appropriations are made biennially for the payment of certain expenses in connection with the maintenance of the Governor's Mansion. However, it has been held by the courts that expenses for groceries for the Governor and his family can not be paid out of such appropriations.[11]

*Removal and Succession.*—The Governor may be removed from office only by impeachment. The power of impeachment is vested in the House of Representatives, and trial is before the Senate, sitting as a court of impeachment. Conviction requires a two-thirds vote of the Senators present. "Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor trust or profit under this State. A Party convicted on impeachment shall also be subject to indictment trial and punishment, according to law." If articles of impeachment are preferred against the Governor, he is suspended from exercising the duties of his office during the impeachment trial.[12]

Thus far in the history of our State only one Governor has been impeached.[13] The Supreme Court has upheld the Senate's judg-

[9] The Forty-third Legislature appropriated for the Executive Department, including the Governor's Mansion, $31,664 for 1933-34 and $30,664 for 1934-35. *General Laws,* 43d Leg., reg. sess., 471-472 (1933).

[10] *Constitution,* Art. IV, secs. 5, 6.

[11] *Terrell, Comptroller of Public Accounts, v. Middleton,* 187 S. W. 367 (1916).

[12] *Constitution,* Art. XV, secs. 1, 2, 3, 4, 5; *Revised Civil Statutes,* II, arts. 5961-5963 (1925).

[13] F. A. Ogg, "Impeachment of Governor Ferguson," *American Political Science Review,* XII, 111-115 (1918).

ment of impeachment in this case.[14] The recall is not employed as a constitutional method for removal of State officers in Texas.

Succession to the office of Governor is vested in the Lieutenant-Governor. "In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or of his impeachment or absence from the State, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified; or until the Governor impeached, absent or disabled, shall be acquitted, return, or his disability be removed." In case of the death of the Lieutenant-Governor while filling the vacancy in the office of Governor, or of his resignation, refusal or inability to serve, removal from office, impeachment, or absence from the State, the President pro tempore of the Senate shall administer the government until superseded by a Governor or Lieutenant-Governor. When the Lieutenant-Governor or the President pro tempore of the Senate administers the government as Governor, each receives the same compensation as the Governor would have received had he been employed in the duties of his office. While so employed each is likewise subject to all of the constitutional restrictions and inhibitions imposed on the Governor.[15]

*The Governor's Administrative Powers.*—The Constitution designates the Governor as "the Chief Executive Officer of the State." It also adds that "He shall cause the laws to be faithfully executed. . . ." [16] It is an almost uniform rule of state constitutional law that these provisions do not confer upon the Governor any specific power. In other words, he has little or no inherent executive power under these provisions. "The rule of delegated powers and strict construction has been nearly everywhere applied to the Governor, so that legally he is not usually considered as having any particular power unless it is granted to him, in the constitution or statutes, either expressly or by necessary implication." [17]

The Governor's powers may be classified according to source as legal or extra-legal. Legal powers are those imposed expressly or by implication by the Constitution and statutes of the State. Extra-legal powers are those derived from the Governor's position as political leader, and from his personal political influence. According to character the Governor's power may be classified as

[14] *Ferguson v. Maddox,* 263 S. W. 888 (1924).
[15] *Constitution,* Art. IV, secs. 16, 17, 18.
[16] *Ibid.,* Art. IV, secs. 1, 10.
[17] J. M. Mathews, *American State Government,* 229 (1924).

administrative, legislative, and special. We shall discuss first the Governor's legal powers.

1. The Power of Appointment. Of the executive officers mentioned in the Constitution, only one is appointed by the Governor, the Secretary of State. Three other heads of departments—the Superintendent of Public Instruction, the Commissioner of Agriculture, and Railroad Commissioners—are elected by the voters. With these exceptions, the Governor has the power to fill by appointment numerous offices, boards, and commissions which constitute the greater part of the State administration.[18] The Governor also has power to appoint some judicial officers, including the Commission to assist the Court of Criminal Appeals and part of the membership of the Advisory Judicial Council. A few local officials are appointed by the Governor, as notaries public, public weighers in certain cities, pilot boards, and wreck-masters in each maritime county of the State.[19]

Vacancies in State and district offices, except those of members of the Legislature, are filled by appointment of the Governor and confirmation by the Senate, if that body is in session. The names of recess appointees must be sent to the Senate during the first ten days of the session next following the nomination. If the Senate rejects the nomination, the office becomes vacant immediately, and the Governor is required to make further nominations without delay until a confirmation takes place. If there is no confirmation during the session of the Senate, the Governor can not appoint to fill the vacancy any person who has been rejected by the Senate, but he may appoint some other person to fill the vacancy until the next session of the Senate, or until the regular election to the office. Failure of the Senate to take any action whatsoever on the nomination does not affect the status of the incumbent, the Attorney-General has ruled. Appointments to vacancies in elective offices shall continue only until the next general election.[20]

The appointing power of the Governor, however, is subject to several limitations. It does not extend to the heads of seven State departments, who are chosen by popular vote. This method tends to make these officers independent of the Governor and to disintegrate the administration. Confirmation by the Senate is also required for all appointments of the Governor. It is doubtful

[18] Stewart, *op. cit., passim.*

[19] *Revised Civil Statutes,* II, arts. 5681, 5949, 6972, 8310 (1925); *Constitution,* Art. IV, sec. 26.

[20] *Constitution,* Art. IV, sec. 12.

whether this requirement serves any useful purpose, and its abandonment is recommended by most writers on state government.[21] Another device which is commonly used in appointments to State boards and commissions is the practice of overlapping terms, the appointment of part of the membership every year or two years. Technical qualifications are required by statute for appointment to certain offices; e. g., State Health Officer, State Librarian, and others. The members of some boards must represent different economic interests—e. g., Industrial Accident Board—or must come from different geographical sections of the State—e. g., Board of Water Engineers. Part of the membership of certain boards must be women; e. g., Board of Regents of the College of Industrial Arts. A few professional examining boards are appointed from lists submitted by the professional association; e. g., the Board of Veterinary Medical Examiners from a list submitted by the State Veterinary Medical Association. Appointments by the Governor and by heads of departments are in no way limited by a civil service law. Texas does not recognize the merit system in her State administration.[22]

2. The Power of Supervision. The Constitution makes it the duty of the Governor to cause the laws to be faithfully executed; yet nowhere does it give him power to enforce this duty, nor has such power been conferred by statute. Control of the administration is supposed to be exercised by the Governor through his powers of appointment and removal, but these powers are only nominal. The very number of administrative agencies renders real supervision impossible. Over the elective heads of departments the Governor has little control; they are independent of him and of each other. While the Governor receives regularly many reports from administrative departments and can require special reports at any time, and while many administrative details require his approval, these instruments of control, owing to the absence of sifting by intermediate officials, burden the Governor with a mass of unnecessary details, and take his time from more important questions of State policy.

3. The Power of Removal. Removal of executive officers by impeachment, by the Governor on address of two-thirds of the Legislature, by quo warranto proceedings, and by the Governor

[21] Frank G. Bates and Oliver P. Field, *State Government,* 268 (1928); Mathews, *op. cit.,* 232-233.

[22] Frank M. Stewart, "The Civil Service Problem in Texas," *Good Government,* XLVI, 81-85 (1929).

alone are the four methods of removal provided by the Constitution and statutes. The elective constitutional officers are removable by impeachment, and the Legislature is given authority to establish the procedure of removal for all State officers where the method of removal has not been provided in the Constitution.[23]

By statute several officials have been added to the list of those removable by impeachment—Secretary of State, Commissioner of Insurance, Banking Commissioner, and "all other State officers and heads of State departments or institutions of any kind, and all members, regents, trustees, commissioners having control or management of any State institution or enterprise. . . ." [24] On address of two-thirds of each house of the Legislature the Governor shall remove the Commissioner of Agriculture, Commissioner of Insurance, and Banking Commissioner for wilful neglect of duty and other specified offenses.[25] Another section of the statutes provides for the trial and removal of any public officer by quo warranto proceedings.[26]

The Governor's power to remove State officials is given in the following section of the statutes: "All State officers appointed by the Governor, or elected by the Legislature, where the mode of removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office, and to be reported by him to the next session of the Legislature thereafter." [27]

It is very doubtful whether the Governor, under the authority of this statute, has any independent power of removal of State officials. In 1917 the Attorney-General ruled that the Governor had no power to remove a University Regent from office under authority of this section of the statutes. Although the statutes provided no specific method of removal for such officials, the Attorney-General held that a Regent could only be removed from office for causes provided by the Legislature under quo warranto proceedings. The law officer expressed his doubt as to the validity of the article, because the Constitution, Article XV, section 7, requires the Legislature to provide by law "for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution." Any method of removal,

[23] *Constitution,* Art. XV, secs. 2, 7.
[24] *Revised Civil Statutes,* II, art. 5961 (1925).
[25] *Ibid.,* II, art. 5964.
[26] *Ibid.,* II, art. 6253.
[27] *Ibid.,* II, art. 5967.

therefore, which does not make provision for a trial does not comply with the Constitution.[28]

In 1921 the Governor sought to remove a prison commissioner. To secure his removal it was necessary for the Legislature to pass an act supplementing existing methods of removal of prison commissioners by providing for trial in a district court on suit brought by the Attorney-General on the direction of the Governor. After a trial and appeal to the Supreme Court, the commissioner was removed.[29]

From this review of the methods of removal of public officials in Texas, it will be seen that the Governor's power of removal is practically in no case capable of independent exercise. The power of appointment does not imply the right to remove. Hence the power of removal is not an effective instrument of administrative control.

Locally elected officials can not be removed by the Governor in any case. Governor Neff strongly urged two Legislatures to pass a law providing that the Attorney-General, upon direction of the Governor, should bring quo warranto proceedings against local law-enforcing officials who wilfully refused to enforce State laws. Influenced by a strong feeling of localism and home rule, the Legislature refused to pass the law.

4. Financial Powers. The control of the Governor over the financial administration of the State is indirect and shadowy. His powers in this field have recently been strengthened by the budget law of 1931, which makes the Governor the responsible budget-making authority.[30]

All heads of State institutions and departments are required by the Constitution to keep an account of all funds received and disbursed from all sources, and to make a semi-annual report to the Governor. The Governor may require a written report from such officers "upon any subject relating to the duties, condition, management and expenses of their respective offices and institutions . . . and may also inspect their books, accounts, vouchers and public funds. . . ." No machinery was provided until recently whereby the Governor could exercise more than a nominal control over State finances under this section of the Constitution.

In 1929 the Forty-first Legislature created the position of State

[28] *Biennial Report of the Attorney-General,* 444-448 (1916-1918).
[29] *Southwestern Political Science Quarterly,* II, 270-271 (1921).
[30] See Ch. VI.

Auditor and Efficiency Expert and gave that officer, acting under the direction of the Governor, broad powers of investigation of the financial affairs of the State officials.[31]

The Governor has the power to approve deficiency claims presented by heads of departments and institutions and other spending agencies, but the aggregate amount of deficiencies approved shall not exceed two hundred thousand dollars for all purposes.[32] His control over appropriations, through the item veto, will be discussed in connection with the veto power.

5. Police Powers. The duty of regulating the acts of persons and the use of property in the interests of the public safety, health, morals, and welfare has been entrusted principally to locally elected law-enforcing officials, over whom the Governor has little control. However, the Governor has at his command the State militia and the State rangers. He may call out the militia to execute the laws of the State and to suppress insurrections.[33] In recent years this body has been used for strike duty and for policing turbulent communities, as oil boom towns. A less expensive and a more satisfactory agency of law enforcement is at the command of the Governor—the State ranger force. This small but efficient body of men operates under the direction of the Governor, acting through the Adjutant-General. Rangers have all the powers of peace officers and may be used anywhere in the State in the Governor's program of law enforcement. It is the most effective and direct means under the control of the Governor whereby he can discharge his constitutional duty to "cause the laws to be faithfully executed." [34] The State Highway Patrol operates under the supervision of the State Highway Commission.

Not all of the control of the Governor over the administration is due to his legal powers. His extra-legal power or influence is of great importance. This influence is due in part to his legal powers to appoint, to remove, to require information from administrative officers concerning their departments, to inspect their books and accounts, and to his position as titular head or leader of his party. The power to fill a large number of administrative offices gives the Governor considerable influence with those who wish appointment

[31] See Ch. VI.

[32] *Revised Civil Statutes,* I, art. 4351 (1925); *Laws,* 40th Leg., reg. sess., 232-233 (1927).

[33] *Constitution,* Art. IV, sec. 7; *Revised Civil Statutes,* II, arts. 5830, 5831, 5889 (1925).

[34] *Revised Civil Statutes,* II, arts. 6560-6573 (1925).

and their friends. While the legal power of the Governor to remove and direct administrative officers in their work is limited, the personal relationships between the executive and his appointees are usually such that the Governor can exert a considerable influence over the conduct of their work. His power to require information and to inspect the records of administrative officers gives him the opportunity occasionally to expose misconduct on the part of administrative officers, sometimes leading to legal proceedings or investigation by the Legislature, and usually to much publicity. Through his power to prepare the budget, to veto items of appropriation bills, his relation to the party organization, and his power to sway public opinion, there is developed a political influence which reaches far beyond the powers conferred upon him by law.

*The Governor's Legislative Powers.*—Although the Governor is nominally the chief executive authority in the State Government, he participates with the Legislature in the determination and formulation of the policies of the State. The Governor's influence over the lawmaking process arises from his control over the organization and sessions of the Legislature, his power to send messages, and his power to veto acts, including items in appropriation bills.

1. Control over Organization and Sessions of Legislature. The Governor has no legal power of control over the organization of the Legislature. Resignations of members of the Legislature are sent to the Governor, who issues a writ of election to fill the vacancy.[35] The time of meeting of regular sessions of the Legislature is fixed by the Constitution and statutes, and hence is not subject to control by the Governor.[36] In some states the Governor has the power to adjourn the Legislature when there is a disagreement between the two houses as to the time of adjournment. He has no such power in Texas. On extraordinary occasions the Governor may convene the Legislature at the seat of government or at a different place in case it should be in possession of the public enemy or in case of the prevalence of disease there.[37]

This power to convene the Legislature in special sessions on extraordinary occasions is the most important control exercised by the Governor over the sessions of the Legislature. His proclamation calling the session must state specifically the purpose for which the Legislature is convened. He can not convene the Sen-

[35] *Constitution,* Art. III, sec. 13.
[36] *Ibid.,* Art. III, sec. 5.
[37] *Ibid.,* Art. IV, sec. 8.

ate alone, as is possible in several states. When in special session the Legislature is limited to passing bills upon subjects designated in the proclamation of the Governor calling the session or presented to it by the Governor after the session is convened.[38] But while this power to control the agenda of special sessions is of great importance, it is subject to certain general limitations. In the first place, it applies only to legislative acts and not to those which are executive or judicial in character, such as confirmation of appointments and impeachment.[39] In the second place, the Governor can control only the general subjects of legislation, and not the details of legislation. Finally, the Governor frequently yields to the entreaties of members of the Legislature to submit "pet measures" which were unsuccessful at the regular session.

The power to call special sessions and to control the subjects of legislation can be used by the Governor to compel an unwilling Legislature to consider his legislative program, and by this means to call the attention of the public to his ideas of needed legislation. In recent years the number of special sessions has materially increased.

2. Messages. The Constitution requires that "The Governor shall, at the commencement of each session of the Legislature, and at the close of his term of office, give to the Legislature information, by message, of the condition of the State; and he shall recommend to the Legislature such measures as he may deem expedient." [40] He is also required to account to the Legislature for all public moneys received and paid out by him from any funds subject to his order, and a statement must accompany his message. At the commencement of each regular session he is required to present estimates of the amount of money required to be raised by taxation for all purposes. His messages are therefore of three kinds: first, a formal opening message, in which he reviews the state of public affairs, and makes recommendations for legislation on a number of subjects which he has emphasized in his campaign and which are frequently to be found in the party platform; second, special messages sent from time to time during the legislative session frequently recommending the adoption of some "administration measure"; and third, the final message upon retirement, which reviews the accomplishments of the administration. By invitation

[38] *Constitution,* Art. III, sec. 40; Art. IV, sec. 8.
[39] *Ferguson v. Maddox,* 263 S. W. 888 (1924).
[40] *Constitution,* Art. IV, sec. 9.

of the Legislature the Governor has recently appeared in person to read his formal message at the beginning of the session, and also to address the houses informally during the course of the session. All communications from the Governor are printed in the daily journals of both houses. They are invariably discussed in the daily press, sometimes reprinted entirely, and usually attract a large measure of public interest.

3. The Veto Power. Every bill which has been passed by both houses of the Legislature must be presented to the Governor for his approval. If he approves the bill, he signs it and files it with the Secretary of State. If he disapproves the bill, he returns it with his objections to the house in which it originated. When either house receives a bill disapproved by the Governor, the message is read and spread on the Journal. The house may then consider the question of passing the bill over the Governor's veto at once, or it may postpone action to a definite time, or refer the bill and message to a committee. If two-thirds of the members present agree to pass a bill notwithstanding the Governor's objections, it is sent to the other house, with the Governor's objections and a certificate that it has been repassed over the Governor's veto. If, after reconsideration by that house, the bill is passed by a two-thirds vote of the members present, it is returned to the house of its origin and is filed with the Secretary of State for publication as a law. If the bill fails to pass over the Governor's veto in either house, it is filed away as dead. The votes in both houses on reconsideration of the Governor's vetoes must be by yeas and nays, and the record of members voting for and against the bill must be entered on the Journal of each house respectively.

If bills are delivered to the Governor while the Legislature is in session, he has ten days, exclusive of Sundays, to consider them. Signed bills are filed with the Secretary of State, vetoed bills are sent back to their house of origin, and bills not signed or disapproved by the Governor within the time prescribed become law automatically. The "pocket veto" is unknown in Texas. When the time of delivery of bills is within ten days of the final adjournment of the Legislature, the Governor has twenty days, including Sundays, after the adjournment of the Legislature, to consider the bills. The Governor's power with reference to these bills is absolute. His vetoes are final; they can not be reconsidered by any subsequent session of the Legislature. Bills vetoed by the Governor during the twenty-day period are filed with his objections

in the office of the Secretary of State and notice is given by public proclamation. Bills not signed within the twenty-day limit become law without his signature.[41] The Governor thus possesses a negative control over most of the acts of the Legislature. He may not be able to get his measures passed, but in most cases he can determine what bills shall finally become law. He is in fact a "third house" in the lawmaking process.

The indirect effects of the Governor's veto power are also significant. The extent of his negative influence over legislation is not measured entirely by the actual number of vetoes. Knowledge that the Governor is opposed to a bill may cause it to be modified or prevent its passage altogether. It is not an unusual practice to recall bills from the executive office so that they may be changed to eliminate the Governor's objections and escape a threatened veto.

The Governor also has the power to veto items in appropriation bills. These vetoes may be reconsidered by the Legislature if it is in session in the same manner as any other bill. If the Legislature has adjourned, which is usually the case, the Governor's vetoes are final.[42] No power is given the Governor to reduce the amount of a specific appropriation; he can only eliminate the item. The courts have also held that he has no constitutional authority to veto the language qualifying an appropriation or directing the method of its expenditure.[43] Where the Governor has transmitted objections to items in an appropriation bill to the Legislature while in session, he can not file objections to other items of the bill after adjournment.[44]

"Governors throughout the country," says Professor Mathews, "are exercising the power of vetoing items of appropriation bills with increasing frequency, and the number of occasions arising where the action of the legislature renders the exercise of this power necessary or desirable is also on the increase. . . . Legislatures have sometimes, either by inadvertence or design, placed the Governor in an awkward and embarrassing position by adjourning after making appropriations largely in excess of the anticipated revenues or of what the state treasury will bear. In order to preserve the financial integrity of the state and avoid a

[41] *Constitution,* Art. IV, sec. 14; *Legislative Manual,* 42d Leg., 438-440 (1931).
[42] *Constitution,* Art. IV, sec. 14.
[43] *Fulmore v. Lane,* 140 S. W. 405 (1911).
[44] *Pickle v. McCall,* 24 S. W. 265 (1893).

deficit, the governor is then forced to reduce the total amount of the appropriations, though knowing that by so doing he will incur the displeasure and criticism of the persons, institutions, or interests who would otherwise benefit thereby. . . . In cutting down appropriations, therefore, the governor must usually be imbued with a high order of courage and a deep belief in the support of his action by the mass of the people." [45]

In dealing with the Legislature the Governor can use his political influence, which is often quite as real as, and sometimes more effective than, his formal legal powers. This influence may be due to his position as political leader or to the fact that the public is coming to look to the Governor for leadership in the formulation of State policies. Every Governor has his "pet measures," and while he can not introduce them into the Legislature, his friends in the two houses can do so. After these "administration bills" are introduced, pressure can be brought upon the legislators for their enactment. Members of the Legislature are interested in appointments which the Governor can make; they are interested in his approval of bills which they have introduced; they are interested in appropriations which he has the power to veto; and at special sessions they often want the submission of certain subjects for legislative consideration. And if these measures fail, the Governor can appeal to public opinion, and he has the advantage of being able to get more publicity than the Legislature. Through his power to control the agenda for special sessions, he can force the Legislature either to accept or to reject his program. From his threat of possible vetoes, and by the suggestion that defective bills presented to him during the session be recalled for amendment, and from the fact that he is the sole judge as to what bills shall become law after the adjournment of the Legislature, the Governor has assumed an increasing share in legislation. While deplored by some as an encroachment of the executive upon the legislative province, the initiative of the Governor in legislation is but the natural result of a demand on the part of the public for leadership in policy-forming which the Legislature has not been able to produce.

*The Governor's Special Functions.—*

1. The Military Power. The Governor is commander-in-chief of the military forces of the State, except when they are called into actual service of the United States, when they are under the

[45] Mathews, *op. cit.*, 224.

command of the President.[46] He appoints biennially an Adjutant-General who is in control of the military department of the State subject to the Governor's orders. Through him the Governor from time to time transmits his directions, rules, and regulations relating to the military commissions, military forces, military stores and supplies, etc. The Adjutant-General has the rank of brigadier-general. He and twelve aides-de-camp constitute the Governor's military staff.

When an invasion of or an insurrection in the State is made or threatened, or when there is tumult, riot, or breach of the peace, or imminent danger of such, or when the Governor may deem it necessary for the enforcement of the laws of the State, he may call forth the active militia or any part of it, and if the force is not sufficient, he may call out such part of the reserve militia as he may deem necessary.[47] Use of the militia to "protect the frontier from hostile incursions by Indians or other predatory bands," once important, is now obsolete. A county or city in which military forces of the State are employed in aid of the civil authority may be declared in a state of insurrection by proclamation of the Governor, if he thinks the maintenance of law and order will thereby be promoted.[48]

2. The Pardoning Power. The power of the Governor to issue pardons, remit fines, etc., is given in the following section of the Constitution:

> In all criminal cases, except treason and impeachment, he shall have power after conviction, to grant reprieves, commutations of punishment and pardons; and under such rules as the Legislature may prescribe, he shall have power to remit fines and forfeitures. With the advice and consent of the Senate, he may grant pardons in cases of treason, and to this end he may respite a sentence therefor, until the close of the succeeding session of the Legislature; *provided,* that in all cases of remissions of fines and forfeitures, or grants of reprieve, commutation of punishment or pardon, he shall file in the office of the Secretary of State his reasons therefor.[49]

He is assisted in this work by a Board of Pardons and Paroles consisting of three members appointed for terms of six years. The

[46] *Constitution,* Art. IV, sec. 7.
[47] Sarah Ann Llewellyn, *Martial Law in Texas* (Master's Thesis, University of Texas, 1932).
[48] *Revised Civil Statutes,* II, arts. 5768, 5778, 5783, 5787-5790, 5830, 5889 (1925).
[49] *Constitution,* Art. IV, sec. 11.

Board thoroughly examines every application for a pardon which the Governor refers to it and reports its recommendations to him. But the final power of pardon rests with the Governor. He may or may not follow the recommendation of the Board of Pardons and Paroles. Handling pardons is one of the most harassing duties of the chief executive. The report of the Joint Legislative Committee on Organization and Economy said: "Probably the greatest single time-consuming activity of the Governor is the consideration of paroles and other clemency matters."

3. Powers as Head of the State. The Governor is the official channel of communication between the State and other states and with the Federal Government.[50] His functions in relation to the extradition of fugitives from justice are well known. It is the duty of the Governor to represent the State on many ceremonial occasions, to review parades, to be host to distinguished public visitors, and to represent the State officially at meetings outside its borders, such as at the annual Conference of Governors or the inauguration of a President.

4. Miscellaneous Powers. The Governor has a considerable number of functions which defy classification. He issues proclamations on divers subjects; appoints many unimportant local officers; serves ex officio as a member of many State boards; signs documents by the hundreds; temporarily appoints to a vacancy in a United States senatorship until a candidate can be elected and qualified; listens to candidates for appointments and to applicants for pardons and paroles and their friends; grants interviews to the press; is photographed on the steps of the Capitol with visiting delegations; holds conferences with political leaders; and makes speeches whenever his time permits. His is a busy office and one difficult to fill. "It demands sound judgment, a steady head, and unremitting industry. He who holds the post is much in the public eye and continually under the fire of criticism from the opposing political party. He is expected to do the work of three or four men and to achieve results which, owing to the division of authority between himself and the legislature, are not always within his power to secure. He is blamed when things go wrong—often when the blame does not belong to him. Few governors go out of office without their popularity diminished." [51]

[50] *Ibid.*, Art. IV, sec. 10.

[51] W. B. Munro, *The Government of the United States,* rev. ed., 490-491 (1925).

## OTHER EXECUTIVE OFFICERS

*Lieutenant-Governor.*—The Lieutenant-Governor is next in rank to the Governor. He is chosen at every election for Governor by the same electors and in the same manner, continues in office for the same time, and has the same qualifications. Electors are required to distinguish for whom they vote as Governor and for whom as Lieutenant-Governor. He is President of the Senate and has the right to debate and vote on all questions when the Senate is in Committee of the Whole. He has the deciding vote in case of a tie. Besides presiding over the Senate his principal duty is to succeed the Governor in certain circumstances.[52] As President of the Senate he receives the same compensation and mileage as Senators; while acting as Governor, the same compensation as the Governor.

*Secretary of State.*—This official is the only one of the executive officers of the State who is appointed by the Governor and Senate. He continues in office during the term of service of the Governor and receives an annual salary of $2,000, the lowest fixed by the Constitution. As the State's secretary he keeps the seal of the State and attests the Governor's signature to all commissions, proclamations, and certificates of official character. He authenticates the publication of the laws, is the custodian of the original acts of the Legislature, keeps a fair register of all the official acts and proceedings of the Governor, and, when required to do so, lays such records, papers, minutes, and vouchers before the Legislature or either house.[53] He is required to keep a complete register of all the officers appointed and elected in the State, and has charge of the distribution of the journals, laws, and judicial reports printed by order of the Legislature. At the beginning of each regular session of the Legislature, the Secretary of State presides until a Speaker is chosen.[54]

He has certain duties to perform in connection with elections, including the furnishing of election supplies, receiving returns of elections of certain State and district offices, and serving as a member of the State election board to canvass election returns and declare the results.[55]

Certificates of incorporation of domestic companies and licenses

[52] *Constitution,* Art. IV, secs. 16, 17.
[53] *Ibid.,* Art. IV, secs. 19, 20, 21.
[54] *Revised Civil Statutes,* I, arts. 4330-4341; II, art. 5424 (1925).
[55] *Ibid.,* I, arts. 2925, 3033-3034, 3082-3083.

to foreign corporations desiring to do business in the State are issued from his office. Franchise taxes paid by domestic and foreign corporations are collected by his office.[56] The administration of the "blue sky" law has been placed in the hands of the Secretary of State. He serves as a member of the Intangible Tax Board.[57]

*Attorney-General.*—The chief law officer of the State is elected every two years by the voters, maintains his office at the seat of government, and receives an annual salary of $2,000 and fees not to exceed $2,000 per year. He prosecutes and defends all actions in the Supreme Court or the Court of Civil Appeals in which the State is interested. He transmits to the proper district or county attorney any certified account, bond, or other demand which he has received from the Comptroller for prosecution and suit. He has the power to require the district and county attorneys to report to him, at the close of their courts, the status of all such suits. He examines all county and municipal bonds and approves their validity, if they are in conformity with the Constitution and laws. As counsel for the State the Attorney-General gives legal advice to the Governor, heads of departments and institutions, committees of either branch of the Legislature, and county auditors upon any question touching the public interest, or concerning their official duties. He advises district and county attorneys in the prosecution and defense of all actions in their courts wherein the State is interested.[58] The Attorney-General is a member of the Banking Board, Depository Board, Board to Select the Auditor for the Prison System, and five other such boards.

*Comptroller of Public Accounts.*—The Constitution provides that the Comptroller of Public Accounts shall hold his office for the term of two years, receive an annual salary of $2,500, reside at the seat of government during his continuance in office, and perform such duties as the Legislature may require of him. The Constitution thus establishes the office but fails to prescribe its duties. By law the Comptroller has been made the principal fiscal officer of the State. His duties include accounting control over State expenditures and supervision of the accrual and collection of State revenues. He keeps all accounts between the State and the United States and all other accounts in which the State is interested; audits the claims of all persons against the State; settles

[56] *Ibid.*, I, arts. 1313, 1529; II, arts. 7084, 7085.
[57] *Ibid.*, I, arts. 579-600; II, art. 7098.
[58] *Constitution,* Art. IV, sec. 22; *Revised Civil Statutes,* I, arts. 4394-4413 (1925).

the accounts of all persons indebted to the State; and draws warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the treasury. He serves as a member of the Intangible Tax Board, Board to Calculate the Tax Rate, Board to Select the Auditor for the Prison System, and Board of County and District Road Indebtedness.[59]

*Treasurer.*—At each biennial general election a State Treasurer is chosen who receives an annual salary of $2,500 fixed by the Constitution. It is the duty of the Treasurer to receive on the warrants of the Comptroller of Public Accounts all moneys paid into the treasury of the State; to countersign and pay all warrants drawn by the Comptroller on the treasury; to keep accounts of the receipts and expenditures of the public moneys of the treasury, and to open an account in the treasury for all appropriations made by law. The Treasurer is a member of the Banking Board, Board of County and District Road Indebtedness, Board to Calculate the Tax Rate, Board to Select the Auditor for the Prison System, and secretary of the Depository Board.[60]

*Commissioner of the General Land Office.*—The General Land Office, established by the Constitution, is in charge of a Commissioner elected by popular vote for a term of two years. He receives an annual salary of $2,500. He must reside at the capital of the State during his continuance in office. The statutes thus prescribe his general duties: "The Commissioner shall superintend, control and direct the official conduct of all subordinate officers of the General Land Office, and execute and perform all acts and things touching or respecting the public land of this State or rights of individuals in relation thereto, as may be required by law, and make and enforce suitable rules consistent therewith. He shall give information to the Governor and Legislature concerning the public lands, or the General Land Office, when required." He is a member of the Board of Examiners of Land Surveyors and of several other State boards.[61]

[59] *Constitution,* Art. IV, sec. 23; *Revised Civil Statutes,* I, arts. 4342-4366 (1925).

[60] *Constitution,* Art. IV, sec. 23; *Revised Civil Statutes,* I, arts. 4367-4393 (1925).

[61] *Constitution,* Art. IV, sec. 23; Art. XIV, sec. 1; *Revised Civil Statutes,* II, arts. 5251, 5268 (1925).

## REFERENCES

A good discussion of the state executive is found in C. P. Patterson, *American Government,* rev. ed., Ch. XXV (1933). Appropriate chapters are also found in the other general texts on American government. A more specialized treatment will be found in the texts on state government. See also Judd and Hall, *The Texas Constitution,* Chs. VI, VII. The political careers of Texas Governors are briefly sketched in Hugh Nugent Fitzgerald, "Governors I Have Known," and Norman G. Kittrell, "Governors Who Have Been, and Other Public Men of Texas." The messages and other State papers of the Governors are scattered through the Legislative journals and the records in the Secretary of State's office. Governor Pat M. Neff has published many of his addresses under the title, *The Battles of Peace* (1925). The lives of some Governors have been the subject of masters' theses at the University of Texas. There is need for a comprehensive study on the state executive. The reports of the executive departments furnish much material on the workings of the State Government. Parts 1, 2, 3, 4, of the report of the Joint Legislative Committee on Organization and Economy, *The Government of the State of Texas* (1933), deal with the offices discussed in this chapter.

# CHAPTER V

## STATE ADMINISTRATION

One who confined his study of administration in Texas to the constitutional offices already described would have an incomplete picture of the State administrative machine. In 1933 the report of a legislative committee listed 131 more or less independent agencies in the State Government, approximately two-thirds of which had been created since 1900.[1]

### CLASSIFICATION OF ADMINISTRATIVE AGENCIES

Several bases might be used in classifying the officers, boards, and commissions which go to make up the State administration. They might be classified as to term; duties; compensation; method of appointment; source of creation—the Constitution or statute; full time, part time, or ex officio; etc. A classification made several years ago by one of the authors of this book is thought to be still satisfactory.[2] Using this classification and omitting a number of temporary and inoperative divisions, we may list the agencies under the following seven heads:

*Constitutional Officers.*—These are: Governor, Lieutenant-Governor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, and Attorney-General.

*Statutory Officers.*—These may be divided into: (1) Heads of Departments, as the Adjutant-General, Commissioner of Agriculture, Banking Commissioner, Health Officer, Highway Engineer, Commissioner of Labor Statistics, State Librarian, Reclamation Engineer, Superintendent of Public Instruction, Tax Commissioner, and State Auditor and Efficiency Expert; and (2) Other Statutory Officers, as State Chemist, State Expert Entomologist, State Forester, Legislative Reference Librarian, In-

[1] Joint Legislative Committee on Organization and Economy, *The Government of the State of Texas,* Pt. 1: Ch. I (1933), hereinafter cited as *The Government of the State of Texas.*

[2] Frank M. Stewart, *Officers, Boards and Commissions of Texas,* University of Texas Bulletin No. 1854 (1918). See also *First Biennial Report of the State Auditor and Efficiency Expert,* V. 5 (1930).

spector of Mines, Ranger Force, State Veterinarian, State Service Officer, Assistant Secretary of State, Auditor for the Prison System, Indian Agent, and Rio Grande Compact Commissioner for Texas.

*Executive and Supervisory Boards and Commissions.*—These are: Board of Insurance Commissioners, Game, Fish, and Oyster Commission, State Board of Education, Board of Health, Highway Commission, Industrial Accident Board, Library and Historical Commission, Live Stock Sanitary Commission, State Mining Board, Railroad Commission, Board of Managers of Texas State Railroad, and Board of Water Engineers.

*Boards of Control for State Institutions.*—These are:

1. Educational Boards: Board of Directors of Agricultural and Mechanical College of Texas, Board of Regents of College of Industrial Arts, Board of Managers of North Texas Junior Agricultural College, Board of Regents of State Teachers Colleges, Board of Directors of the Texas College of Arts and Industries, Board of Directors of Texas Technological College, and Board of Regents of the University of Texas.

2. Eleemosynary Boards and Commissions: State Board of Control, State Commission for the Blind.

3. Penal Boards: Texas Prison Board.

*Examining Boards and Commissions.*—These are: Board of Public Accountancy, Board of Chiropody Examiners, Board of Dental Examiners, Board of Embalming, Board of Examiners of Land Surveyors, Board of Legal Examiners, Board of Library Examiners, Board of Medical Examiners, Board of Nurse Examiners, Board of Examiners in Optometry, Board of Pharmacy, Commissioners of Pilots, State Seed and Plant Board, Board of Examiners for Teachers, Board of Veterinary Medical Examiners, and Board of Barber Examiners.

*Ex officio and Advisory Boards and Commissions.*—These are: Anatomical Board, Board to Select Auditor for the Prison System, Board for Lease of Eleemosynary and State Memorial Lands, Board for Lease of Texas Prison Lands, Board for Lease of University Lands, Board of County and District Road Indebtedness, Board of Mineral Development, Banking Board, Depository Board, State Board of Canvassers, Commissioners for Fannin Park, Gonzales State Park Commissioners, Historical Board, Industrial Commission, Commissioners for King Park, State Parks Board, State Board of Vocational Education, San Jacinto State

Park Commissioners, Intangible Tax Board, Board to Calculate Tax Rate, Washington State Park Commission, Board of Pardons and Paroles, and Firemen's Training School Advisory Board.

*Miscellaneous Boards and Commissions.*—These are: Alamo Land Acquisition Board, Board of Mansion Supervisors, Compensation Claims Board, and Pink Bollworm Commission.

## DEFECTS OF STATE ADMINISTRATION

*The Position of the Governor.*—The most serious defect of State administration in Texas lies in the weakness of the powers of the Governor as head of the State administration. This is conspicuously true in comparison with the position of the President in the national administration. The Governor is popularly supposed to be responsible for the conduct of the administration, but his supervision over the administrative agencies is so limited that he can not reasonably be held responsible for the acts of State officials. His appointive power is restricted by the practice of popular election of the heads of several important departments, and by the requirement of confirmation by the Senate; his removal power is limited by the Constitution and statutes; his control over the acts of administrative subordinates is too qualified to be effective; and he has practically no real power of exercising financial control over the administration. A salary of $4,000 per year and a term limited to two years are further restrictions on the executive office. Under these conditions the Governor can not be the responsible head of the State administration.

Other defects of the Texas administrative system are: unscientific fiscal system, duplication and overlapping of work, unsatisfactory reporting system, the long ballot, no merit system, short terms, and low standards of compensation.

*Unscientific Fiscal System.*—A thorough examination of the State's system of financial administration—including budgeting and appropriating, accounting, auditing and reporting, treasury and personnel administration, tax administration, and purchasing and property control, was made by the expert staff working under the direction of the Joint Legislative Committee on Organization and Economy. The committee's indictment of the prevailing fiscal system was severe:

> Since Texas was established as a State, there has probably been less progress in financial administration than in the administration of any other function of the government. The State has undertaken many new

activities and has expanded all its services since the Constitution now in force was adopted; the volume of its financial transactions has increased from approximately a million dollars a year to over one hundred million dollars a year; but there has been little change in the machinery and methods of financial administration for the State as a whole. The prerequisites of effective financial management have not received recognition, much less been provided; the tremendous responsibilities involved and the scope and complexity of the duties that should be performed are not appreciated; and, consequently, the technical skill, the experience, the business acumen, and the sound judgment, that are essential, have never been provided, nor does it appear that any attempt has been made to secure the services of men possessing these qualifications. . . .

The results are in evidence on every hand. The financial condition of the State as a whole is not known; there is no way of establishing the amounts owed either to or by the State; there are no adequate records of the expenditures to which the State, through its spending agencies, has been committed; no significant statements of the operations of the State as a whole are or can be produced; estimates of probable future financial condition are but guesses. There is no way of comparing financial plans with actual performance, or estimates with realizations; there is nothing even remotely approaching cost accounting; the first principles of expenditure control are not even understood, much less applied; the objectives of efficient treasury management are not even seen; and yet the State is spending enough money on disjointed, independent efforts by its many agencies in the field of financial administration, to pay for the technically qualified executives and staff, and the facilities, of an efficient and economical organization for financial management.[3]

*Duplication of Work and Overlapping of Functions.*—State administration in Texas has developed without systematic planning. The establishment of new fields of State activity has been paralleled by the creation of new agencies to administer them. Few surveys have been made to determine whether existing agencies could handle the new function. As a result of this policy administrative agencies have multiplied until they now number over one hundred. Instances of duplication and overlapping of functions are to be found in all principal lines of work. The general condition was concisely stated by Governor Neff in his message of July 26, 1921:

We have too many boards, bureaus and commissions. The State is burdened with governmental agencies. It is top-heavy. We have too much machinery and consequently too much overhead expense. The

[3] *The Government of the State of Texas,* Pt. 2: 1-2.

Government should be simplified. There is no excuse for duplication and triplication of work.[4]

*Unsatisfactory Reporting System.*—Accurate and prompt reporting is an essential element of responsible government. Neither the Governor, Legislature, nor the public receives prompt and definite information regarding the conduct of the State's affairs. Practically every department of the State Government issues a printed report, but reports are irregular, slow in publication, and fail to furnish, in many instances, definite information on administration. Most reports are made to the Governor, for transmission by him to the Legislature, and they may be quarterly, annual, or biennial, for the fiscal year, the calendar year, or for the fiscal biennium.

The contents and methods of presentation of most reports make them practically useless to the average citizen or legislator. Only a few are indexed. Some are without a table of contents. Bound volumes of reports are not issued. Separate reports are issued for each State agency.[5]

*Long Ballot.*—Every two years the people of Texas are called upon to elect, in addition to local, district, national, legislative, and judicial officers, nine officials of the State administration. Six of the nine elective officials are constitutional: Governor, Lieutenant-Governor, Attorney-General, Treasurer, Comptroller of Public Accounts, and Commissioner of the General Land Office; and three are statutory: Railroad Commissioners, Commissioner of Agriculture, and Superintendent of Public Instruction.

Experience has shown that popular election is about the poorest conceivable method of selecting qualified and competent administrators to head departments.

*No Merit System.*—Texas has no merit system in the civil service. Appointments and removals in the State offices are made according to the rules and practices of the "spoils system." Technical training and competence are ignored in making appointments in most departments.

Demand for civil service reform has been made in several Democratic platforms from 1882 to 1912. Governor Colquitt in 1913, and Governor Hobby in 1919, recommended the adoption of the merit

[4] *House Journal,* 37th Leg., 1st and 2d called sess., 82 (1921).

[5] J. L. McCamy, *Governmental Reporting in Texas State Administration* (Master's Thesis, University of Texas, 1932).

system in messages to the Legislature. The central investigating committees of 1917 recommended the enactment of a civil service law to test the efficiency of employees and to protect them from dismissal for political reasons. Governor Moody's efforts in behalf of the merit system are well known.[6]

Proposals for a State civil service law have been made during each Legislature since 1911 with the exception of those meeting in 1921, 1923, and 1925, but no bill has yet been passed. The Legislature and the public have seemed indifferent to this much needed reform.

*Short Terms.*—Popular election, short terms, and rotation in office are features of the constitutional administrative system of Texas. Rotation in office, while not required by the Constitution, is the general practice after two terms. The terms of all offices not fixed by the Constitution are limited to two years.

An amendment to the Constitution adopted in 1894 gave Railroad Commissioners a six-year term. In 1912 amendments were adopted extending the term of members of the Board of Prison Commissioners to six years, and the Legislature was given authority to provide a six-year term, with biennial renewals, for the members of the Board of Regents or directors of the "educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law. . . ." [7] Under this provision of the Constitution the Legislature has given a six-year term to several boards and commissions, but the terms of single officials are still limited to two years.

Short terms and biennial elections hamper effective administration. They render almost impossible the development of continuity in the administration of the affairs of the State.

*Low Standards of Compensation.*—A survey of the last biennial appropriation acts shows that the compensation standards of the State are low. "There are few, if any, 'fat salaries' being paid by the State. . . . The State is notoriously cheap when it comes to paying for the work done in its behalf." [8]

Salaries of heads of departments are fixed by the Constitution

[6] See Frank M. Stewart, "The Civil Service Problem in Texas," *Good Government,* XLVI, 81-85 (1929); and B. F. Wright, Jr., *The Merit System in American States with Special Reference to Texas,* University of Texas Bulletin, No. 2305, 96-104 (1923).

[7] *Constitution,* Art. XVI, secs. 30, 30a, 58.

[8] *Dallas Morning News,* June 7, 1923.

or by statute. Salaries for subordinate positions are generally fixed by the appropriation committees.

Constitutional salaries are entirely inadequate—Governor, $4,000; Attorney-General, $4,000; Secretary of State, $2,000; Comptroller, Treasurer, and Commissioner of the General Land Office, $2,500. All efforts to amend the Constitution to raise the salaries of executive officials have failed.

Salaries fixed by statute are, on the whole, better, but many positions are underpaid. The same low standards and lack of uniformity prevail in the salaries for subordinate positions. There is an absolute lack of a scientific and modern compensation plan.

### MOVEMENT FOR REORGANIZATION OF STATE ADMINISTRATION

Before 1917 it can not be said that administrative reorganization in the interests of economy and efficiency was a major legislative problem. But beginning with the Thirty-fifth Legislature the subject has had the attention of both the executive and the legislative branches of the government at practically every session of the Legislature.

Governors Hobby, Neff, and Moody made strong appeals to the Legislatures during their administrations in behalf of administrative reorganization, the budget system, the merit system, the short ballot, and a uniform system of accounting and auditing for all departments. Governor Moody urged the Legislature, in 1929, to make a survey of the administrative organization of the State Government with the view of eliminating unnecessary departments, coördinating their efforts, and fixing additional responsibilities upon the Chief Executive.

Legislative accomplishments in the field of administrative reform during this period were few. A board of control was created in 1919 and twenty-three separate agencies were abolished and their work transferred to the board. In 1929 the office of State Auditor and Efficiency Expert was created with power to investigate the activities of departments, the duplication of efforts between departments, and to work out a uniform system of accounting and auditing for all State services. Otherwise legislative action has been confined to the creation of a number of new agencies, and minor consolidations of services. Generally speaking, the work done has been piecemeal, not in accordance with a systematic plan, and often in violation of sound principles of public administration. Lack of familiarity in the Legislature with the problem and

the lack of a comprehensive plan have accounted in large part for the meager results accomplished.[9]

A most important resolution in the field of administrative reform was passed by the Forty-second Legislature and approved by the Governor on May 18, 1931. A committee of three Representatives, appointed by the Speaker, and two Senators, appointed by the President of the Senate, was created "for the purpose of making a thorough investigation of all state institutions and state departments of any and all kinds . . . with a view to ascertaining if such institutions and departments may be, or can be operated at a greater efficiency, and a lesser expense to the taxpayers of this state; and as to whether or not the policies and operation of such institutions can be changed in such a way that the cost of government might be reduced, and a greater service be rendered by such institutions to the people of this state, and whether some of such institutions or departments may be consolidated and made to function more efficiently and at lesser expense to the people; and as to how the affairs of this state may be run in a more economical manner without affecting the efficiency of such affairs. . . ." A written report of the committee's findings, conclusions, and recommendations was to be made to the Forty-third Legislature.[10]

Organization of the committee was completed on June 10, 1931, with the election of Representatives Harry N. Graves as chairman and Phil L. Sanders as secretary. Other members were Representative J. Turney Terrell and Senators Carl C. Hardin and Grady Woodruff. The name of "Joint Legislative Committee on Organization and Economy" was adopted. Griffenhagen and Associates, nationally-known specialists in public administration and finance, were selected by the committee as technical staff for the conduct of the inquiry. Work on the survey was begun early in 1932, and the committee's report, in thirteen parts, was presented to the regular session of the Forty-third Legislature, in January, 1933.[11] The committee's work constitutes the most comprehensive and thorough study of the organization, finance, administrative policies, methods, and problems of the various State departments and institutions ever undertaken in Texas.

[9] Frank M. Stewart, "Depression and Public Administration in Texas," *The Alcalde,* v. 20: 108-111 (Feb., 1932).
[10] *General Laws,* 42d Leg., reg. sess., 938-40 (1931).
[11] *The Government of the State of Texas,* Pts. 1-13 (Dec., 1932-Jan., 1933).

### PROPOSED PLAN OF REORGANIZATION [12]

The committee proposed a plan of reorganization of the State administrative agencies which was based upon certain practical working principles accepted as necessary to secure effective and economical administration. These requisites include (1) simplicity and definiteness of organization, functions, and responsibility; (2) unity and coördination; (3) centralization of service functions; (4) logical and practical allocation of functions; (5) centralized and qualified managing authorities; (6) competent personnel; and (7) continuity of operating management within the organization and its several departments.

Applying these principles to the existing organization of State administration the committee proposed a plan of dividing the various executive and administrative functions of the State among the Governor and nineteen administrative departments. This plan, which did not require constitutional amendments, was proposed for immediate adoption. But the full acceptance of the committee's proposals contemplated a number of constitutional changes.

When the Constitution is amended the committee suggested that all provisions fixing the tenure of office should be removed except in the case of the Governor, Lieutenant-Governor, and Attorney-General, whose term should be increased to four years. Constitutional provisions with respect to the offices of Treasurer, Comptroller of Public Accounts, and Commissioner of the General Land Office should be repealed. All provisions in the Constitution fixing salaries of public officials should be eliminated.

*The Governor.*—The term of the Governor should be increased to four years, and the constitutional limitation on his salary should be removed so as to permit the payment of a salary in keeping with the responsibilities of the office. All parole matters should be transferred to the proposed Department of Public Welfare and Board of Public Welfare, but pardons, commutations of sentences, and remissions of fines should be the sole responsibility of the Governor. The Governor would appoint, by and with the advice and consent of the Senate, and subject to certain restrictions imposed by law, heads of fifteen departments who should continue in office during satisfactory service and be removable by the Governor for good cause under appropriate restrictions. He would have the power, with the approval of the Executive Cabinet, to

[12] *The Government of the State of Texas,* Pt. 1: ch. 2.

prescribe general rules for the conduct of the administrative departments, not inconsistent with law.

*Lieutenant-Governor.*—The term of this office should be extended to four years. No other recommendations were made.

*Executive Cabinet.*—Under the chairmanship of the Governor there should be an Executive Cabinet composed of the heads of the administrative departments. At monthly meetings this body should consider matters of interdepartmental relations, and general administrative policies and procedures. A Secretary of the Executive Cabinet should be appointed by the Governor for an indefinite term with power of removal for cause vested in the appointing authority. He should be chosen solely on the basis of his qualifications. The office should be a non-political, continuing one, "whose primary purpose shall be to place at the disposal of each succeeding administration of the State government, the accumulated knowledge and experience of the incumbent relative to the course of business management and the operating program of the State, the past action in such matters and the reasons therefor, and the status of the projects and undertakings that the State has in process at any time."

*State Auditor.*—The title "State Auditor and Efficiency Expert" should be changed to "State Auditor" and provision be made for his selection by the Legislature at each regular session for a term of two years, beginning September 1. He should be relieved of all administrative duties, and his work should be confined to post-auditing. This office should be entirely independent of the administration and report its findings and recommendations directly to the Legislature.

*Legislative Reference Service.*—It is suggested that the Legislative Reference Division of the State Library, including the bill-drafting function, be placed under the direct control of the Legislature, in charge of a qualified Director of Legislative Reference chosen jointly by the President of the Senate and the Speaker of the House of Representatives.

*Proposed Administrative Departments.*—It is proposed to consolidate the 131 agencies into 19 administrative departments. Eighteen departments would be headed by a single officer, who would be called a Commissioner, except in the case of the Departments of State, Law, Militia, Highways, and Buildings and Grounds, which would be headed by the Secretary of State, Attorney-General, Adjutant-General, State Highway Engineer, and

Superintendent of Buildings and Grounds, respectively. The Department of Education would have two administrative heads, the Commissioner of Education in charge of the Bureau of Public Schools and the Chancellor of Higher Education in charge of the Bureau of Higher Education. Special qualifications for department heads should be written into the law and a statement of the qualifications and experience of each candidate proposed for appointment should be made a matter of record and accompany each appointment submitted to the Senate for confirmation.

Department heads would be appointed by the Governor except in the case of four departments. Constitutional elective officers, the Attorney-General and the Commissioner of the General Land Office, would head the Department of Law and General Land Office. The State Board of Education would appoint the heads of its two bureaus—the Commissioner of Education and the Chancellor of Higher Education, while the Highway Commission would retain its present power to appoint the State Highway Engineer. The Comptroller of Public Accounts, elected as provided in the Constitution, would head the Bureau of Audit and Control in the proposed Department of Finance and Administrative Service, and the State Treasurer, likewise elected, would head the Bureau of the Treasury in the proposed Department of Taxation and Revenue.

Provision is made in each department in which important policy-forming, quasi-judicial, or quasi-legislative functions must be performed for a board or commission, of three, six, or nine citizens, appointed by the Governor, by and with the advice and consent of the Senate, for overlapping terms of six years. Members should be appointed "on the basis of their interest in public affairs, their good judgment, and their knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." They should be compensated for their actual expenses and should hold no other public office while serving as such members. With the exception of the Departments of Education and Highways, heads of departments in which these boards function are to be appointed by the Governor from among not fewer than three candidates certified by the board or commission as qualified for the duties to be performed. Such boards shall also approve all appointments of heads of bureaus or institutions, rules of the department, budget estimates, and other major matters of administrative policy, advise the head of the department upon any matter

referred to it by him, conduct investigations and studies, and in some cases hear and determine appeals or act as a board of review.

All provisions in the Constitution or statutes fixing compensation of officers and employees should be repealed, and salaries should be established in conformity to a consistent compensation plan, based upon a scientific classification of positions.

Each department would assume the duties of a number of separate independent agencies, which would be abolished. Bureaus would be organized in the new department to take over the work of the new functions, and these would in some cases be divided into divisions. All officers and employees whose functions are transferred to another agency shall, so far as practicable, continue to perform their usual duties until the expiration of their respective terms for which they were appointed or elected.

The following departments would be included in the State administrative organization under the plan proposed by the committee.

1. Departments Having Administrative Service Functions
   - Department of State (under the Secretary of State)
   - Department of Law (under the Attorney-General)
   - Department of Taxation and Revenue (including the Treasurer), with a State Tax Board
   - Department of Finance and Administrative Service (including the Comptroller of Public Accounts), with a Board of Finance
   - Department of Buildings and Grounds
2. Departments Rendering Direct Service to the Public
   - Department of Education, with a State Board of Education
   - Department of Public Welfare, with a Board of Public Welfare
   - Department of Public Health, with a Board of Public Health
   - Department of Public Safety
   - Department of Militia
   - Department of Labor, with an Industrial Commission
   - Department of Banking
   - Department of Insurance
   - Department of Live Stock Sanitary Inspection
   - Department of Forests, Fish, and Game, with a Board of Forests, Fish, and Game
   - Department of Water Supply and Reclamation, with a Board of Water Engineers
   - General Land Office (under the Commissioner of the General Land Office)
   - Department of Highways, with a Highway Commission
   - Department of Public Service, with a Public Service Commission

It is declared to be the policy of the State that hereafter no administrative agency should be created outside of the organization of the administrative departments established by the plan.

### RESULTS TO BE EXPECTED FROM REORGANIZATION

The committee did not attempt to make exact estimates of economies possible through reorganization. However, it believed that

> They should be decidedly substantial, probably running high into the millions in the aggregate, if the proposals made are given their full effect in the manner intended. For example, the effect of the proposals relating to the institutions of higher education alone have been considered from the standpoint of the money savings involved, which it is believed would amount to a total in excess of $3,500,000 a year. Probably an amount that would compare favorably with this would be involved in the remaining proposals. Thus the total savings that could be realized through the changes proposed should easily amount to a sum in excess of $6,000,000 a year. But the significant fact is that all such savings should be accompanied by better service to the public instead of a sacrifice or crippling of essential services.[13]

An Administrative Code embodying the committee's plan of reorganization was introduced into both houses of the Forty-third Legislature, but failed of adoption. Administrative reorganization in the interests of efficiency and economy, too long delayed by public inertia and political opposition, awaits action by future legislative sessions.

### REFERENCES

Appropriate chapters on state administration are found in C. P. Patterson, *American Government,* rev. ed., Chs. XXXVI and XXXVIII (1933), and in the other general texts on American government. More detailed treatment is given in the specialized texts on state government. For Texas the student should consult four University of Texas bulletins: *The Reorganization of State Administration in Texas,* No. 2507 (1925); *Officers, Boards, and Commissions of Texas,* No. 1854 (1918); *The Movement for the Reorganization of State Administration,* No. 1848 (1918); and *The Merit System in the American States with Special Reference to Texas,* No. 2305 (1923). The reports of the Joint Legislative Committee on Organization and Economy—*The Government of the State of Texas,* Parts 1-13—and the volumes of the *First and Second Biennial Reports* of the State Auditor and Efficiency Expert are invaluable for the study of Texas State administration.

[13] *The Government of the State of Texas,* Pt. 1: vii-viii.

# CHAPTER VI

## STATE FINANCE

The subject of finance may conveniently be studied under four main divisions: expenditures, revenues and tax administration, financial administration and control, and state and local indebtedness.

### EXPENDITURES

Since the present Constitution was adopted, in 1876, the annual volume of the financial transactions of the State has increased from approximately a million dollars to over one hundred million dollars. For the year ending August 31, 1932, the total cost of operating the State Government amounted to $95,800,980.53. Expenditures other than governmental cost brought the total to $106,735,784.65.[1] The following table shows how the State's dollar was expended for the year ending August 31, 1932.

| *Activity* | *Cents of Each Dollar Expended* | *Total Dollars Expended* |
|---|---|---|
| Legislative | .0022 | $209,140.76 |
| Judicial | .0248 | 2,371,198.90 |
| Executive and Administrative | .0126 | 1,208,466.22 |
| Military and Law Enforcement | .0082 | 782,080.11 |
| Regulation of Business and Industry | .0119 | 1,137,021.79 |
| Conservation of Health and Sanitation | .0033 | 316,301.58 |
| Development and Conservation of Natural Resources | .0206 | 1,978,007.21 |
| Highways | .4118 | 39,458,336.00 |
| Eleemosynary and Correctional | .0600 | 5,744,739.00 |
| Educational: Support of Free Schools | .3023 | 28,961,501.44 |
| Higher Education | .0994 | 9,525,277.33 |
| Eleemosynary Education | .0035 | 331,536.63 |
| Parks and Monuments | .0002 | 19,781.88 |
| Pensions | .0372 | 3,562,641.57 |
| Miscellaneous Governmental Cost | .0020 | 194,950.11 |
| TOTAL COST | 1.0000 | $95,800,980.53[2] |

[1] *Annual Report of the Comptroller of Public Accounts*, 23-26 (1932).
[2] *Ibid.*, 14.

It will be noted that highways and the support of education, including the free schools and higher education, stand first and second in the list of functions spending the largest sums, the two combined being responsible for a fraction over 81 per cent of the total expenditures. Next in order come the support of the eleemosynary and correctional institutions, with .06 per cent of the total, and Confederate pensions, with .0372 per cent.

The increase in the cost of the State Government was clearly demonstrated by a recent report made by the State Auditor, in which expenditures for the year ending August 31, 1920, were compared with those of the year ending August 31, 1930.[3] For 1920, total disbursements were $33,498,724.83, and for 1930, $103,672,473.30, an increase of $70,173,748.47, or 209.48 per cent, using the disbursements for the year 1920 as a basis of 100 per cent. The increase of $70,173,748.47 was divided as follows:

| *Activity* | *Amount* | *Percentage of Total Increase* |
|---|---|---|
| Highways | $44,641,320.25 | 63.615 |
| Education | 18,547,504.74 | 26.432 |
| Eleemosynary and Correctional | 2,527,026.40 | 3.601 |
| Pensions | 1,392,682.30 | 1.985 |
| Judiciary | 1,049,034.61 | 1.495 |
| Development and Conservation of Natural Resources | 1,076,667.21 | 1.534 |
| Legislative (two-year period) | 403,099.62 | .574 |
| Executive, Administrative, Regulatory, and all other activities | 536,413.34 | .764 |
| TOTAL | $70,173,748.47 | 100.000 |

Highways and education together account for a little more than 90 per cent of the total increase. Support of eleemosynary and correctional institutions comes next.[4]

A comparison of the disbursements of the State Government for a five-year period, ending August 31, 1931, was made by the Tax Survey Committee, created by the Forty-second Legislature.

[3] *Second Biennial Report of the State Auditor and Efficiency Expert,* v. 2 (1932).

[4] With the exception of the expenditures for the Texas Prison System the figures were taken from the Comptroller's Reports and include disbursements for maintenance and support as well as capital outlays. County Aid is not included in the expenditures for 1920, but for 1930 $10,515,575.39 of County Aid is included.

Total disbursements for 1927 were $73,563,721, and for 1931, $109,184,992, an increase of 48.42 per cent.[5]

Neither the Auditor nor the Tax Survey Committee suggest any causes for this increase in the cost of the State Government. The increase is attributable to the same general causes which have been operative in other states; namely, growth of population and wealth, expansion of the services rendered by the state, and the decline in the purchasing power of money.

Regardless of the causes, the rapid growth of the expenditures for the State Government has become of increasing concern to the taxpayers. In an effort to place a constitutional limitation on State expenditures the Forty-third Legislature submitted an amendment to the Constitution to be voted upon at the general election in November, 1934. The proposed amendment would limit to $22.50 per capita of the State's population the amount the State could collect biennially for taxes and other sources, and would impose the same limitation with respect to appropriations.[6]

## REVENUES AND TAX ADMINISTRATION

*Revenues.*—The expansion of State expenditures has made necessary a corresponding increase in revenues. Total revenue receipts for the fiscal year ending August 31, 1932, amounted to $96,894,751.25 and the addition of non-revenue receipts brought the total to $108,693,455.71. The principal sources of revenue for 1931-1932, the amounts received, and the percentage of each item to the total receipts, are shown in the table on page 90.

From this table it is seen that the gasoline tax of four cents per gallon is the most productive. One-fourth of the receipts from this tax goes to the available free school fund, one-fourth to the "County and Road District Highway Fund," for the payment of county and road district expenditures on highways, and the remainder to the State Highway Fund.[7] Refunds to claimants, including farmers, municipalities, contractors, aircraft, railroads, etc., amounted to over 10 per cent or $3,275,141.75 for 1931–32.[8]

Since 1922 the increase in income from the general property tax has been relatively slight. The adoption of a constitutional amendment in November, 1932, exempting from State taxation residence

[5] *Report of the Tax Survey Committee,* Ch. 4 (1933).
[6] *General Laws,* 43d Leg., reg. sess., 1038-1039 (1933).
[7] *General and Special Laws,* 42d Leg., 3d called sess., 18 (1932).
[8] *Annual Report of the Comptroller of Public Accounts,* 197 (1932).

homesteads of $3,000 assessed taxable value, will further reduce the income from this tax.

Gross receipt taxes are levied chiefly on gas, water, power and light companies, telephone and telegraph companies, express companies, collecting agencies, car line companies, pullman companies,

| *Source* | *Cents of Each Dollar Received* | *Total Dollars Received* |
|---|---|---|
| Ad Valorem Tax | .2494 | $24,175,000.74 |
| Inheritance Tax | .0064 | 617,934.78 |
| Poll Tax | .0160 | 1,553,706.88 |
| Gross Receipts Tax | .0723 | 7,001,299.89 |
| Insurance Companies Occupation Tax | .0231 | 2,236,950.37 |
| Occupation Tax | .0021 | 199,511.42 |
| Cigarette Tax | .0353 | 3,420,645.42 |
| Fur Tax | .0002 | 15,406.91 |
| Fish and Oyster Tax | .0003 | 28,940.38 |
| Gasoline Tax | .2911 | 28,213,020.59 |
| Franchise Tax | .0154 | 1,490,349.73 |
| Fire Insurance Commission Maintenance Tax | .0222 | 212,429.14 |
| Workmen's Compensation, Insurance Commission Maintenance Tax | .0006 | 56,198.18 |
| Licenses | .0375 | 3,636,619.11 |
| TOTAL TAXES AND LICENSES | .7519 | $72,858,013.54 |
| Fees and Permits | .0117 | 1,130,384.55 |
| Land Sales, Rentals, and Royalties | .0243 | 2,355,893.84 |
| Sale of Commodities and Properties | .0059 | 572,018.16 |
| Court Costs, Fines and Suit Settlements | .0025 | 238,107.91 |
| Interest and Penalties | .0374 | 3,623,324.22 |
| Miscellaneous Revenues | .0032 | 313,322.35 |
| County, Federal, and Other Aid | .1631 | 15,803,686.68 |
| TOTAL REVENUE RECEIPTS | 1.0000 | $96,894,751.25[9] |

casinghead gas and natural gas, regulating pipe line, oil well owners, sulphur companies, and textbook dealers. Insurance companies pay a tax on gross premium receipts and a maintenance tax for the cost of supervision.

Occupation taxes are paid by auctioneers, cigarette dealers, circuses, theaters, peddlers, shooting galleries, carnivals, and other occupations. One-fourth of the revenue derived from the occupa-

[9] *Annual Report of the Comptroller of Public Accounts,* 14 (1932). The figure .7519 in the first column is an incorrect total of the preceding items; it is, however, the figure that appears in the Comptroller's report.

tion taxes and one dollar of each State poll tax of $1.50 is payable to the available free school fund. The gasoline tax is also levied as an occupation tax.

The inheritance tax is one on collateral heirs. Franchise taxes and charter fees and permits paid by domestic and foreign corporations are collected chiefly by the Secretary of State. The State's share of the motor vehicle license fees constitutes the bulk of the income under "Licenses." County aid for the building of State highways will not be accepted in the future, in accordance with a new policy adopted by the Legislature in 1932. The greater part of the interest collected by the State comes from the investment of the permanent funds of the University and eleemosynary institutions. Land sales, rentals, and royalties are derived chiefly from public lands and oil development in West Texas.[10]

*Tax Administration.*—The Comptroller of Public Accounts is the principal tax official of the State. His office supervises the administration of the general property tax, assesses and collects the gross receipts taxes, gasoline tax, gross production tax, and occupation taxes, keeps records of delinquent ad valorem taxes and of payment of such taxes, audits reports on inheritance taxes, handles gasoline tax refunds, and supervises the collection of taxes and auditing accounts of collectors and payers of all taxes other than ad valorem. Tax functions take 52.8 per cent of the expenditures for the office.[11]

The State Tax Board is composed of the Comptroller, Secretary of State, and Tax Commissioner, chairman, the last-named being appointed by the Governor for a term of two years. Its principal work is the ascertainment and apportionment among the counties of the intangible assets of the railroad, ferry, bridge, turnpike, or toll companies. The board has the duty of investigating the operation of the revenue laws and systems of other states, but no appropriation has ever been made for this purpose. The board is popularly known as "The Intangible Tax Board." [12]

For the purpose of calculating the State property tax rate a board consisting of the Governor, Comptroller, and Treasurer was created in 1907, and is known as the Board to Calculate the Ad Valorem Tax Rate. It meets once a year, as soon after July 15 as possible, to calculate the rate, and when fixed the rate is certi-

[10] *Ibid.*, 7-22, 183, 184, 197.
[11] *The Government of the State of Texas,* Pt. 2: 26-31.
[12] *Ibid.,* 125-26.

fied to the county assessors. In determining the rate the board follows a mechanical formula prescribed by law.[13]

County assessors, collectors, and commissioners' courts serve as agents of the State in the assessment, collection, and equalization of the general property tax.

The imperfections of the tax system of Texas have long been the source of comment by legislators and academic and business representatives. Legislative tax survey committees, within the last four years, have referred to the tax laws as "a mass of indiscriminate enactments," "a mass of patchwork," "a series of separate and in many instances incoherent measures," resulting in many discriminations in the tax burden and a general demand for the equalization of taxes. Specific indictments are brought against the general property tax: it is a tax principally on real property; intangible personal property largely escapes taxation; there is lack of uniformity in assessment rates from county to county; there are unjust discriminations among the owners of different classes of property and among the owners within the same class of property; and the tax, as administered, is a constant inducement to perjury.[14] It is said that the formula prescribed by law for fixing the State tax rate is an arbitrary and inadequate method of balancing the budget.

But the most serious defect is the absolute lack of a unified system of tax administration. Tax functions are distributed among a number of independent and uncorrelated agencies. "Our investigations have convinced us that most of our tax laws are being administered very passively at best, and that there is much duplication of effort under our present system." "Our tax system may be compared to a business without a strong executive and administrative head." [15]

### FINANCIAL ADMINISTRATION AND CONTROL

Responsibility for the administration of the financial affairs of the State is divided among a number of separate agencies.[16] Theoretically, the Comptroller of Public Accounts is the chief accounting and administrative auditing officer of the State Government, though the expenditures for these purposes amount to not more than twelve per cent of the entire expenditures of the office. His office keeps the appropriation and general accounts of the State, prepares financial

[13] *The Government of the State of Texas,* Pt. 2: 126-27.
[14] *Report of the Tax Survey Committee,* Ch. 1 (1933).
[15] *Ibid.,* 8-9.
[16] *The Government of the State of Texas,* Pt. 2.

reports, audits and approves all claims against the State and issues warrants in payment thereof, administers the Confederate pension fund, and registers bond issues of the State and local governments.

The receipt, custody, disbursement, and investment of State funds constitute the principal duties of the State Treasurer. His office also sells the cigarette tax stamps. A State Depository Board, composed of the Treasurer, Attorney-General, and Banking Commissioner, makes rules and regulations regarding State depository banks.

Centralized purchasing was inaugurated in 1899 with the creation of the office of purchasing agent for the eleemosynary institutions. With the creation of the Board of Control in 1919 purchasing duties were assumed by it. The Division of Purchasing makes purchases of all supplies, except strictly perishable goods, used by all State departments and institutions. Printing and stationery supplies for the departments and institutions are purchased by the Division of Public Printing of the Board of Control.

Before 1921 Texas had the "legislative" type of budget. When the Board of Control was established it was made its duty, through the Division of Appropriations and Estimates, to collect the budget estimates and submit a printed budget to each regular session of the Legislature.

A law of 1931 amended the budget procedure by making the Governor the chief budget officer of the State.[17] The Board of Control will continue to prepare a preliminary budget. From this document and from information furnished by the State Auditor, from other official sources, and from public hearings the Governor prepares a final budget, which is printed and distributed to members of the Legislature, State officials, and citizens. Within thirty days after the beginning of the regular session the Governor must submit to the Legislature five itemized appropriation bills, accompanied by a budget message furnishing required financial information. The Governor and Governor-elect have the right to attend all budget hearings conducted by the Board of Control. Heads of spending agencies and taxpayers may attend and speak before all such hearings and also any hearings conducted by the Governor or legislative finance committees in the consideration of the budget. When a new Governor is elected, he shall prepare five appropriation bills and transmit them to the Legislature within twenty days from the date he takes the oath of office.

[17] *General Laws,* 42d Leg., reg. sess., 339-349 (1931).

The Forty-first Legislature, 1929, created the office of State Auditor and Efficiency Expert.[18] The Governor is authorized to appoint, subject to confirmation by the Senate, "an investigator of all custodians of public funds and disbursing officers of this State and personnel of departments." The State Auditor must be a certified public accountant with at least five years' experience immediately preceding his appointment, of unquestioned intelligence and moral character, and experience in auditing and efficiency details of governmental departments and business. Under the direction of the Governor, the Auditor is granted authority to inspect the books, accounts, records, and reports of all officers, departments, and institutions, and of all custodians of public funds and disbursing officers of the State. He shall thoroughly examine all departments of the State Government with special reference to their activities and the duplication of effort between departments and the efficiency of the subordinate employees. Reports of his examinations of departments shall be furnished to the head of the department, to the Governor, the Speaker of the House, and the President of the Senate. Additional duties have subsequently been imposed upon the Auditor by the Legislature, including the auditing of oil royalties, the compilation of certain information for the Governor in the preparation of the State budget, and the collection of statistics on the taxes and indebtedness of local governments. His reports during the four years of the existence of the office have presented for the first time a true picture of the financial operation of many departments and institutions and have resulted in the adoption of improved methods in many cases. His preliminary investigations of State organization and financial methods had much influence in the legislative decision in 1931 to authorize a comprehensive survey of all State agencies.

An Auditor for the Prison System is selected every two years by a board composed of the Attorney-General, Treasurer, and Comptroller.

In 1932 the Legislature created the Board of County and District Road Indebtedness, to be composed of the State Highway Engineer, Comptroller of Public Accounts, and State Treasurer. Its function is the preparation of a list of bonds of counties and road districts eligible to participate in the fund for payment outlined in the law.

The weaknesses in the existing organization and methods of financial administration were discussed at length in the report of

[18] *General and Special Laws,* 41st Leg., 1st called sess., 222-225 (1929).

the Joint Legislative Committee on Organization and Economy. "The principal defect of the organization for financial administration is the entire lack of any coördinating authority qualified to design, install, and supervise the operation of a unified system of financial administration under which all budgeting, purchasing, accounting, administrative auditing, and fiscal reporting procedures would be integrated." Other limitations noted were: "no real effective budgeting," "no clear-cut, concise, and intelligible statements of financial condition," "woeful inadequacy of the accounting system," lack of provisions for current auditing and for independent post-auditing, and lack of competent personnel. The fiscal laws of the State are "voluminous, detailed, complex, but wholly inadequate." In short, the financial system of the State is antiquated, without integration in organization, competence in personnel, or sound methods of procedure.[19]

*Proposed Plan of Organization for Financial and Tax Administration.*—Several proposals for the reorganization of the tax and financial system of the State have been made within recent years. The Tax Survey Committee, created by the Forty-second Legislature, repeated a recommendation of a similar committee in 1929, that the work of tax collection now performed by a number of independent agencies should be merged under a State Tax Board, greatly enlarged in functions and powers. The State Tax Commissioner should be the administrative head of the department, responsible for the general administration of the department, and the two ex officio members of the board should act only in matters involving assessments.[20]

Reorganization of the numerous financial agencies into three principal departments was recommended by the Joint Legislative Committee on Organization and Economy. These departments were to be Taxation and Revenue, Finance and Administrative Service, and State Auditor. A brief discussion of each department will indicate the plans of the committee.[21]

Department of Taxation and Revenue.—This department would have supervision over all taxation and tax collecting and treasury functions now performed by the State Tax Board, State Tax Commissioner, Comptroller of Public Accounts, Treasurer, Secretary of State, Railroad Commission, Board of Insurance Commis-

[19] *The Government of the State of Texas,* Pt. 1: 5-9; Pt. 2: ch. 4.
[20] *Report,* 28-31.
[21] *The Government of the State of Texas,* Pt. 2: chs. 5, 11.

sioners, Game, Fish, and Oyster Commission, Motor Vehicle Registration Division of the State Highway Department, Board to Calculate the Ad Valorem Tax Rate, and the Board of Equalization for Unorganized Counties. The State Treasurer would head the Bureau of the Treasury in the department, and the State Depository Board would be abolished. A Commissioner of Taxation and Revenue and a State Tax Board would be appointed by the Governor as provided in the committee's recommendations for other departments.

Department of Finance and Administrative Service.—The budgeting, purchasing, accounting, and auditing duties of the State Board of Control, the pre-auditing work of the Auditor for the Prison System, and the duties of the Board to Select the Auditor for the Prison System would be taken over by this department. The Comptroller of Public Accounts' office would be consolidated with this unit, and the Comptroller would head the Bureau of Audit and Control. The department would also take over the duties of the Board of County and District Road Indebtedness and the Board of Managers of the Texas State Railroad. A Commissioner of Finance and a Board of Finance would be appointed by the Governor as provided in the committee's recommendations for other departments.

State Auditor.—This official should be appointed by the Legislature, and his duties should be confined to post-auditing.

## STATE AND LOCAL INDEBTEDNESS

A strict limitation on the creation of a State debt was placed on the State Government by the Constitution of 1876.

> No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; and the debt created to supply deficiencies in the revenue, shall never exceed in the aggregate at any one time two hundred thousand dollars.[22]

The total bonded debt of the State on August 31, 1932, was $4,102,200, owned by permanent funds of the State, as follows: Permanent School Fund, $2,872,000; Permanent University of Texas Fund, $625,600; Agricultural and Mechanical College Permanent Fund, $209,000; Lunatic Asylum Permanent Fund, $126,300; Blind Institute Permanent Fund, $134,400; Deaf and Dumb

[22] *Constitution,* Art. III, sec. 49.

Institute Permanent Fund, $104,300; and Orphan Home Permanent Fund, $30,600.[23]

Any increase of the existing debt of the State requires additional constitutional authorization. In 1919 the voters rejected a bond issue of $75,000,000 for the construction of State highways, and in 1929 and 1931 the Legislature refused to submit to the voters a proposed amendment for a large State bond issue for highway construction. By law of 1932 the State agreed to reimburse counties and road districts for expenditures (bonds and warrants) incurred by them in the construction of State highways. It is estimated that the obligation which the State has assumed, and which will be paid from a fund derived from one-fourth of the gasoline tax revenues, will approximate $108,000,000.[24] On August 26, 1933, the voters adopted a constitutional amendment authorizing the issuance of $20,000,000 of State bonds to match federal funds for coöperative unemployment relief work in Texas.

Two important laws affecting local taxation and finance were enacted by the Forty-second Legislature. One, known as the "Uniform Budget System" law, required all counties, cities, towns, villages, independent and common school districts to prepare a budget to cover all proposed expenditures of the unit for the succeeding year. Copies of all budgets adopted must be filed in the office of the State Comptroller of Public Accounts.[25] Another law requires the county auditor, or the county clerk if there be no auditor, to compile during the month of September a report to the State Auditor showing, for the county and all local units of government within the county, the amount of taxes collected, amount of taxes delinquent, amount to credit of sinking funds, and amount of outstanding bonded indebtedness and outstanding warrants at the end of the fiscal year.[26]

The second report issued by the State Auditor in compliance with this law contains summary tables based on information submitted by 8,466 local units of government (254 counties, 529 cities, 6,990 school districts, 494 road districts, and 199 water districts).[27] Two hundred and seventy-six school districts were not included, as they collected no taxes and had no bonded debt during the fiscal

[23] *Annual Report of the Comptroller of Public Accounts,* 75-76 (1932).
[24] *Dallas Morning News,* July 6, 1933.
[25] *General Laws,* 42d Leg., reg. sess., 339-349 (1931).
[26] *Ibid.,* 500-502.
[27] "Report on Taxes and Indebtedness of Local Units of Government in Texas," *Second Biennial Report,* v. 26 (1933).

year ending August 31, 1932. Indebtedness was reported by 8,760 local units.

Taxes collected by local units of government, including the State ad valorem and other taxes administered locally, for the fiscal periods ended prior to September 1, 1932, amounted to $151,368,084, divided as follows:

| | |
|---|---|
| Counties (except roads) | $16,135,716 |
| Cities (except schools) | 37,744,695 |
| Road districts (including county roads) | 27,521,194 |
| School districts | 34,512,163 |
| Water districts (including navigation) | 5,637,162 |
| TOTAL, Local Units | $121,550,930 |
| State Government | 29,817,154 |
| TOTAL | $151,368,084 |

Adding to this total the amount of other State taxes collected directly by State departments and the highway license fees, amounting to $56,602,984, it is found that the total tax burden for the State amounted to $207,971,068. Delinquent taxes reported as due the State and all local units amounted to $119,645,325.

The net bonded indebtedness (total bonded indebtedness and time warrants minus the amount to the credit of sinking funds) of all local units of government aggregated $708,607,835, divided as follows:

| *Local Units* | *Bonds and Time Warrants* | *Sinking Funds* | *Net Debt* |
|---|---|---|---|
| Counties (except roads) | $43,439,360 | $1,908,479 | $41,530,881 |
| Cities (except schools) | 272,216,152 | 20,293,036 | 251,923,116 |
| Road districts (including county roads) | 233,363,278 | 15,382,056 | 217,981,222 |
| School districts | 127,422,898 | 9,183,869 | 118,239,029 |
| Water districts (including navigation) | 82,133,986 | 3,200,399 | 78,933,587 |
| TOTALS | $758,575,674 | $49,967,839 | $708,607,835 |

The debt of the State of Texas, amounting to $4,102,200, when added to the net debt of all local units gives a total debt of $712,710,035, or $122.36 per capita, based on the 1930 federal census.

As a result of the difficulties encountered in obtaining material for his report the State Auditor recommended that some State agency should be given authority to prescribe and enforce uniform

methods of accounting and reporting for all local units of government. The Joint Legislative Committee on Organization and Economy proposed the creation of a Division of Local Government in the Department of Taxation and Revenue, which would take over the work of the Comptroller in registering the bonds of local governments and from the State Auditor the duty of compiling financial statistics of local governments. "It is proposed that the Department of Taxation and Revenue be empowered to supervise local assessments and collections; to assist local governments in all matters of financial administration; and to require all local governments to file annual reports of financial condition and financial operations." [28]

### REFERENCES

For a general discussion of state finance, see C. P. Patterson, *American Government,* rev. ed., Ch. XXXVII (1933) and other standard texts on American government and state government. See also Judd and Hall, *The Texas Constitution,* Chs. XII, XIII. Part 2 of the report of the Joint Legislative Committee on Organization and Economy (1933) dealing with the fiscal agencies and financial administration is a noteworthy document. Much valuable material will be found in the first and second biennial reports of the State Auditor and Efficiency Expert (1929-1933). One should consult also the annual reports of the Treasurer, Comptroller of Public Accounts, State Tax Commissioner, and the biennial budgets prepared by the Board of Control. The reports of the legislative tax survey committees, in 1929 and 1933, contain pertinent information on the taxation and revenue system of the State. Professor E. T. Miller's, *A Financial History of Texas,* University of Texas Bulletin No. 37, 1916, remains the standard work in this field.

[28] *The Government of the State of Texas,* Pt. 1: 24.

# CHAPTER VII

## STATE EDUCATIONAL ADMINISTRATION

At the close of the fiscal year, August 31, 1933, the scholastic population of Texas, ages 6 to 17 years, inclusive, was 1,567,704, for whose education there were provided 11,836 public elementary schools and 1,400 public high schools. To instruct these pupils 45,873 teachers were employed, of whom 5,429 were Negroes. There were in the State 6,246 common school districts and 1,028 independent school districts. To administer these schools there is the State Board of Education, under whose authority the State Superintendent of Public Instruction functions, together with 254 county superintendents and more than a thousand superintendents of independent school districts.

There are fifteen State-supported institutions of higher learning in Texas, counting branches maintained as separate plants, and two junior colleges. These institutions are:

The University of Texas, Main University, at Austin
The University of Texas, Medical Branch, at Galveston
The University of Texas, College of Mines and Metallurgy, at El Paso
The Sam Houston State Teachers College, at Huntsville
The North Texas State Teachers College, at Denton
The Southwest Texas State Teachers College, at San Marcos
The East Texas State Teachers College, at Commerce
The West Texas State Teachers College, at Canyon
The Stephen F. Austin State Teachers College, at Nacogdoches
The Sul Ross State Teachers College, at Alpine
The Agricultural and Mechanical College, at College Station
The Texas Technological College, at Lubbock
The College of Industrial Arts, at Denton
The Texas College of Arts and Industries, at Kingsville
The Prairie View State Normal and Industrial College, at Prairie View

The last-named institution is the State college of higher education for Negroes. The two junior colleges are the North Texas Junior

Agricultural College, at Arlington, and the John Tarleton Agricultural College, at Stephenville. These junior colleges are branches of the senior Agricultural and Mechanical College. The controlling boards of State institutions are known as boards of regents or directors, the members of which are appointed by the Governor with the consent of the Senate. The size of all boards is uniform, nine members. One board controls the University of Texas and its branches at Galveston and El Paso; another governs the senior Agricultural and Mechanical College, the two junior agricultural colleges, and the Prairie View State Normal and Industrial College. The seven State teachers colleges are supervised by a single board, while each of the other institutions named has a separate board.

In addition to the State educational institutions already named, there are the Texas School for the Blind, the Texas School for the Deaf, and the Deaf, Dumb, and Blind Institute for Colored Youths. These schools are located at Austin and are sometimes classed as eleemosynary institutions. They are under the direct supervision of the State Board of Control.[1]

Imposing as this educational edifice appears, it is yet imperfect in organization and methods of operation. The system in its present form is, nevertheless, the result of long and arduous effort, and its foundation is laid deep in the record of the past.

## A HISTORICAL STATEMENT

The first school in Mexico was begun by Father Gante in the vicinity of Mexico City about 1524. It contained facilities for instructing a thousand children. They were taught prayers, religious exercises, reading, writing, drawing, and music, and the boys were given additional instruction in carpentry, bricklaying, and masonry.[2] In 1536, under the authority of Antonio de Mendoza, Viceroy of New Spain, the College of Santa Cruz de Tlatelalco was established for the education of noble Indians. In 1553 Luis de Velasco, Mendoza's successor, established the Royal University of Mexico, the first in North America.[3]

Spanish authority was not established in the interior province of

[1] *Twenty-seventh Biennial Report of the State Department of Education,* Bulletin No. 314 (1933); Bulletin No. 20, United States Department of Education, I, 1-25, 771-800 (1931).

[2] H. I. Priestley, *The Mexican Nation,* 98.

[3] H. E. Bolton and T. M. Marshall, *The Colonization of North America, 1492-1783,* 50-53.

Texas until after the appearance of the French under La Salle in 1685. After that event Spanish mission schools began to appear, the first being a group in East Texas. During the mission period, which lasted well into the eighteenth century, as many as twenty-five such schools were established. The purpose of these schools was to train the Indians in the ways of settled life, to teach them the Christian religion, and to make them loyal Spanish subjects. They were administered by the Church and supported by the State.

### SCHOOLS FOR SPANISH CHILDREN

In 1718 the Spaniards founded San Antonio: in 1731 they officially designated the settlement Villa de San Fernando de Bexar. Soon a school was opened for instruction of Spanish children. "It is absolutely certain," says Frederick Eby, "that the first school in Texas, other than the missions, was conducted in San Fernando." [4] As early as 1746 Cristobal de los Santos was teaching there. This was in all probability a parish school, administered jointly by the *Cabildo* and the Church authorities.

The Constitution of 1827 of the State of Coahuila-Texas made provision for education as follows: "In all the towns of the State a suitable number of private schools shall be established, wherein shall be taught reading, writing, arithmetic, the catechism of the Christian religion. . . . The method of teaching shall be uniform throughout the State, and . . . Congress shall form a general plan of public education . . . and regulate . . . all that pertains to this most important object." [5]

Pursuant to this constitutional mandate laws were enacted directing the *ayuntamientos* to establish schools and requesting them to appoint visiting committees which were to report semi-annually to the government. Thus by constitutional provision and statutory enactment the new political régime was committed to public education.

Despite this apparent interest in education among Mexican authorities, the establishment of schools in Texas lagged, and during the revolutionary period those that had been created practically ceased to operate. In 1834, according to the report of Colonel Juan Almonte, there was only one school in San Antonio, one near Brazoria, one near Nacogdoches "very poorly supported," another at San Augustine, and one at Johnsburg. There were probably a

[4] Frederick Eby, *Development of Education in Texas,* 61.
[5] Frederick Eby, *Education in Texas, Source Materials,* 30.

few others being conducted by colonists from the United States of which Colonel Almonte did not learn.

The colonists in their petitions protested vigorously to the Mexican Government because it had failed to establish a system of free schools. Nevertheless, the educational provision of the Constitution of 1836 merely said: "It shall be the duty of Congress, as soon as circumstances will permit, to provide by law a general system of education." [6] However, the first Texas Congress, which met in 1836, made no provision for public education. Not until the first message of President Lamar, in December, 1838, is there again official recognition of the government's responsibility along this line. In that message Lamar proposed "a liberal endowment . . . adequate to the general diffusion of a good redamental education in every district of the Republic and to the establishment of a university where the highest branches of science may be taught." [7]

Stimulated by this brisk leadership, the first education law was passed January 26, 1839. It provided, among other things, that three leagues of land (13,284 acres) should be set apart in each county "for the purpose of establishing a primary school or academy," and fifty leagues for the endowment of "two colleges or universities." In 1840 the county school land was increased to four leagues, and the chief justice and his associates in each county were empowered to set up school districts, examine teachers, and inspect and supervise schools. In this law for the first time provision was made for State participation in creating a system of public schools.

Little was done, however, toward actually bringing into existence such a system as the president contemplated. As late as 1855 "only forty-one counties had completed surveys of their school lands; twenty had made only partial surveys; and thirty-eight had made no effort whatever. There was no evidence that any county in early times used its lands for the establishment of schools." [8] The only opportunities for the education of the children of the Texas pioneers continued to be those at their mothers' knee or those provided in the "old-field" schools conducted by itinerant teachers.

[6] H. N. P. Gammel, *Laws of Texas,* I, 1079; Frederick Eby, *Education in Texas, Source Materials,* 131; B. P. Poore, *The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the United States,* II, 1760.

[7] Frederick Eby, *Education in Texas, Source Materials,* 151-152.

[8] Frederick Eby, *Development of Education in Texas,* 92.

### EDUCATION AFTER ANNEXATION

When Texas joined the Union the Constitution of 1845, by a shrewd manipulation of terms, expressed a compromise among prevailing theories of education. In the first section on education it imposed upon the Legislature the obligation of making "suitable provision for the support and maintenance of public schools." The second section stated that the Legislature "shall, as early as practicable, establish free schools throughout the State and shall furnish means for their support by taxation of property . . . and it shall be the duty of the legislature to set apart not less than one-tenth of the annual revenue of the state, derivable from taxation, as a perpetual fund which shall be appropriated to the support of free public schools." [9] Thus was established in Texas the principle of taxation for free public education.

### THE SCHOOL LAW OF 1854

During the administration of Governor Pease a great forward step was made in education. The State Treasurer was designated as ex officio superintendent to administer the common schools, and the county judge and commissioners' court became the county school board; the office of district trustee was created and the trustees were given power to employ primary teachers in colleges and academies and to convert such departments into common schools for the district. It was at this time also that the sum of $2,000,000 in United States 5% bonds was set aside for a permanent endowment of common schools to be known as the Special School Fund. Many private institutions were promoted at this time by local educational leaders, by religious bodies, and by fraternal orders. Eby points out that "from annexation to the beginning of the War 117 institutions were granted charters by the legislature." [10]

### SCHOOLS AFTER THE CIVIL WAR

During the Civil War the State educational system ceased to function, though by the Constitution of 1861 no change was made in the plan of operation. That document declared for free schools to be supported by taxation on property. However, from 1861 to 1870 "no funds were appropriated from the State Treasury for the support of the school system." Under a law of 1856 the per-

[9] Frederick Eby, *Development of Education in Texas,* 104. [10] *Ibid.,* 126.

manent school fund was loaned to railroad companies and became dissipated. By the end of the war the two and a half millions of dollars were practically gone.

In the Constitution of 1866, written at the instigation of the Reconstruction forces under the "Presidential Plan," the educational ideas as expressed in the Constitution of 1845 were reiterated and the plan enlarged. The Legislature was empowered to create a public school system. This system was to be administered by a State Superintendent of Public Instruction to be appointed by the Governor. The State Superintendent, the Governor, and the Comptroller constituted the State Board of Education, which was to have "general management and control of the perpetual school fund, and the common schools under such regulations as the legislature may hereafter prescribe." [11] The Legislature was empowered to levy a school tax, all moneys collected from Negroes to be used for their education.

With the overthrow of the Throckmorton government by the more radical element, and the formulation of the Constitution of 1869, a new system of education was forced upon the people of Texas. That constitution and the school laws of 1870 and 1871, enacted pursuant thereto, provided "the most imperial system of education known to any American state." The law of 1870 provided for a State Superintendent with practically absolute control of the public schools. It provided "that each organized county in this state shall be a school district and the county courts thereof shall be ex-officio boards of school directors for their respective counties," and it required four months' compulsory attendance of all children between the ages of 6 and 18 years.

This system was to be financed through a recuperated permanent fund, and an available fund derived from stipulated sources as follows:

1. The income from the permanent fund.
2. One-fourth of the annual revenues from general taxation.
3. A poll tax from every voter between 21 and 60 years of age.
4. Local taxation sufficient to provide schoolhouses for all scholastic inhabitants both white and black for ten months each year.

Under the terms of the school law of 1871 the educational system was organized along military lines. A Board of Education was created consisting of the Governor, the State Superintendent, and

[11] Frederick Eby, *Education in Texas, Source Materials,* 452.

the Attorney-General. This board had arbitrary power in school affairs.[12]

The tyrannical policy of the State Superintendent and of the Board of Education, the unnecessary increase in the number of employees, together with the general extravagance of the system, brought definite reaction. With the return to power of the Democrats in the election of Governor Coke the downfall of the radical system began. With the ratification of the Constitution of 1875 it was completely obliterated. That document abolished the office of State Superintendent and the compulsory attendance regulation, and placed the school age at 8 to 14 years, inclusive. Local taxation for building schoolhouses was prohibited, and the county school lands, amounting to approximately 45,000,000 acres in addition to the original four leagues, were placed under the control of the counties. By a law passed in 1876 the community school system was established and an ex officio Board of Education was created composed of the Governor, the Comptroller, and the Secretary of State. This board was authorized to employ a secretary whose duties were chiefly clerical. The county judge became the ex officio county school superintendent. He was authorized to appoint three trustees to serve while the school was in session. In their fury, the people had destroyed the good as well as the bad in a system which, if sanely administered, would have been productive of highly beneficial results.

When Governor Roberts adopted the pay-as-you-go policy in 1879, he further crippled the schools by vetoing the appropriation made by the Legislature for their support. He was a friend to education, however, and upon the encouragement and financial assistance of the agents of the George Peabody Fund he secured the recasting of the public school laws, the establishment of the Sam Houston Normal Institute, the reorganization of the Agricultural and Mechanical College in 1879, and, in 1883, the actual opening of the University of Texas, "which was founded by the fathers of the Republic in 1839 and established by law in 1858." O. N. Hollingsworth, as secretary of the Board of Education, did commendable service in reorganizing the school system. The educational progress which followed these acts was noted by interested observers outside of Texas as well as by many within her borders. The ultimate result was the complete rewriting of the State school law in 1884.

[12] Frederick Eby, *Education in Texas, Source Materials,* 521-527, 533-535.

### THE LAW OF 1884

The school law of 1884 marks an important development in educational administration in the State. Among the provisions of that law were the following:

1. It recreated the office of State Superintendent to be filled by election, the Superintendent to have general supervision of the public school system.
2. It abolished the community plan and substituted the district system in all but 53 counties. (In these 53 counties the system was gradually changed.)
3. Upon a vote of two-thirds of the taxpayers (changed to a majority by the constitutional amendment of 1908) a local school tax of 20 cents on the $100 valuation was authorized.
4. A State tax up to 20 cents on the $100 valuation (raised to 50 cents in common school districts by the amendment of 1908) for maintenance of schools for six months of each year was authorized.
5. The purchase of county bonds by the permanent fund was authorized.

The Board of Education was continued. The law also stipulated subjects to be taught and specified that reading must be in the English language. Educational progress under this law was not highly gratifying.

### RECENT TENDENCIES

Legislation for several years reveals a definite trend toward larger units of local school control and support. In line with this tendency a new law enacted in 1887 created the office of county superintendent. In 1923 the Legislature authorized counties having a population of 100,000 or more to adopt by election the county unit form of school administration. Counties eligible under this law to adopt the county system are Bexar, Dallas, El Paso, Harris, and Tarrant. In the same year also the electors were given the right to determine whether the public schools should be free from municipal control with control vested in a board of seven members. In 1927 the County Board of Education, consisting of five members, was authorized, and in the same year the Legislature vested in these county boards, in counties containing more than 1,100 square miles and having a population of 40,000 to 100,000, complete control of the schools. This portion of the act amounted to a special school law for Williamson County. The same law vested

in the county boards in counties having 210,000 or more population authority to subdivide or consolidate school districts. Under this law Dallas County has developed the county unit plan of school administration. In 1929 a law created a common school district to include the whole of Terrell County, and Sterling County has had the unit system of administration since its organization. In 1930 the so-called "grouping law" was passed enabling common school districts to be consolidated with adjacent independent districts upon the petition of a majority of the voters and the presentation of evidence of financial ability to maintain high school work at reasonable cost.

Current legislation continues to fix greater responsibility in State school officials for administration of public school systems. As a culmination of several years' effort on the part of educational leaders a State Board of Education was authorized by a constitutional amendment in November, 1928, to supersede the ex officio board. On October 2, 1929, under provisions of the act of the Forty-first Legislature, the Board of nine lay members was organized. The board assumed its duties with vigor, but the period of its activities has been too brief for accurate appraisal of its administrative importance. "It may be said, however, with a large degree of assurance, that the hope of Texas for a unified, effective system of public education in all its phases has been brought measurably nearer fulfillment by the work that the State Board of Education has already accomplished." [13]

Among the functions assigned the State Board of Education are the following:

1. To consider and report biennially to the Governor on the financial needs of the public free schools.
2. To recommend to the Governor concerning proposals for the establishment of new educational institutions.
3. To consider and report on financial needs, scope, and work of State institutions of higher learning, and to recommend such changes in their courses of study as the needs may warrant, with especial reference to elimination of any needless waste or duplication of work.
4. To select a textbook committee of five experienced and active educators in the public schools of the State to examine books submitted for adoption and recommend thereon to the State Board.
5. To consider the athletic necessities and activities of the public

[13] *Twenty-seventh Biennial Report of the State Department of Education,* Bulletin No. 314, 11 ff. (1933).

schools and to report biennially to the Governor the proper legal division of time and money to be devoted to athletics.

6. To prescribe rules and regulations for the certification of teachers and for examining applicants for such certificates in accordance with the State laws.[14]

The members of the State Board of Education are appointed by the Governor with the consent of the Senate. The law provides that after 1935 they shall serve for six years and their terms shall overlap so that three members shall retire biennially. The board elects one of its members as president and the State Superintendent is ex officio secretary.

### STATE DEPARTMENT OF EDUCATION

In January, 1933, the State Department of Education required the services of approximately eighty employees distributed among eleven divisions as follows: Administration; High School Supervision; Rural School Supervision; Special Rural School Agents; Vocational Education; Vocational Rehabilitation; School Plant; Research and Accounting; Textbook Administration; Correspondence and Supplies; State Board of Examiners.[15]

In July, 1933, State Superintendent L. A. Woods announced an important change in the organization of the Department of Education which affects very materially the method of public school administration. The Division of High School Supervision and the Division of Rural School Supervision are merged in one division whch operates as a single unit under the immediate administration of assistant State superintendents who are specialists in their respective fields. The State is divided into twenty-two districts, in each of which is a resident deputy State superintendent who works under the assistant State superintendents and, in certain counties, in close coöperation with the State supervisor of Negro education. The twenty-two deputy State superintendents administer the high school accrediting provisions of the law, the rural aid law, and otherwise coöperate in promoting the public school interests of the State.

The merging of the two divisions makes possible the elimination of duplication of effort, and places State officials in closer contact

[14] For a discussion of school administration in Texas and other states see United States Office of Education Bulletin No. 20, I, 1-25, 771-800 (1931).

[15] *Twenty-seventh Biennial Report of the State Department of Education,* Bulletin No. 314, 1-22 (1933).

with local school authorities, patrons, and pupils in the administration of the State educational system. It should also effect a curtailment of traveling expenses of a large number of supervisors and specialists for long distances to and from their offices in Austin.

Up to this time (August, 1933) the plan has not been in operation a sufficient length of time to determine its merits. However, it gives promise of being, as announced, the beginning of the "New Deal" in State educational administration in Texas.[16]

### REFERENCES

The most satisfactory references on the development of education in Texas are Frederick Eby, *The Development of Education in Texas* and *Education in Texas, Source Material,* Bulletin No. 1824, The University of Texas (1918). Helpful material is to be found in reports of the United States Bureau of Education, Department of the Interior, especially Bulletin No. 20, *The Biennial Survey of Education, 1928-1930,* two volumes (1931). Education legislation affecting Texas between 1822 and 1897 will be found in H. N. P. Gammel, *The Laws of Texas,* ten volumes (1898). The more recent school laws are summarized in various bulletins of the State Department of Education, Austin; see especially Bulletin No. 297, *Public School Laws of the State of Texas* (1931). For reports of surveys of the educational system of the State, one should consult: *Texas Educational Survey Report,* vols. 1-8 (1925), *The Government of the State of Texas,* Pts. 10-13, and *Biennial Report of the State Board of Education* (1930-1932). See also Judd and Hall, *The Texas Constitution,* Ch. XI.

[16] Peyton Irving, "New Deal in Texas School Control," *Dallas Morning News,* July 28, 1933.

# CHAPTER VIII

## THE STATE JUDICIARY

The importance of the State judicial system to the average citizen arises from the fact that the great mass of criminal and civil litigation occurs in the State courts rather than before federal tribunals. The functions performed by the State courts may be grouped in the following classes: (1) the administration of justice through the adjudication of civil and criminal cases; (2) the restriction of the Legislature to its proper sphere by judicial review; and (3) the enforcement of both constitutional and statutory limitations upon the executive by the use of the same power.[1] It is with the first of these—the everyday administration of justice—that this chapter will be chiefly concerned.

### ORGANIZATION AND JURISDICTION

*Supreme Court.*—The highest Texas court in civil matters is the Supreme Court, which consists of a Chief Justice and two Associate Justices. To be eligible for the supreme bench, a person must be a citizen of this State and of the United States, thirty years of age, and must have been a practicing lawyer or a judge of a court, or both together, for at least seven years. The justices of the Supreme Court are elected by popular vote for six-year terms, and receive an annual compensation of $6,000. Vacancies in the Supreme Court are filled through appointment by the Governor for the period intervening before a general election.[2]

The appellate jurisdiction of the Supreme Court extends to questions of law in the following cases which have been carried to the Courts of Civil Appeals from the trial courts: (1) those in which judges of the Courts of Civil Appeals are not agreed upon a material question of law; (2) those in which a Court of Civil Appeals reverses itself or holds contrary to a decision of another Court of Civil Appeals or of the Supreme Court; (3)

[1] A. N. Holcombe, *State Government in the United States,* 3d ed., 450 (1931).

[2] *Constitution,* Art. V, sec. 2.

those involving the construction or validity of an act of the Legislature; (4) those involving the revenues of the State; (5) those to which the Railroad Commission is a party; and (6) those in which it appears that the Court of Civil Appeals has committed an error of substantive law.[3] The court may issue the various writs such as habeas corpus, mandamus, procedendo, certiorari, and others necessary to enforce its jurisdiction. It may sit at Austin for the transaction of business at any time during the year, and each term shall begin and end with each calendar year.

The Supreme Court appoints a clerk for a term of four years subject to removal at any time.[4] The clerk collects the fees and costs in cases in the court, and files and preserves its records and papers. His salary is $3,000 per annum. There are other employees, including several stenographers, a reporter, and a librarian.

*Commission of Appeals.*—After an investigation of the judicial system, a committee of the Legislature in 1918 recommended that a commission of six persons, to sit in two divisions, be created temporarily to relieve the congestion in the Supreme Court by aiding it in the disposition of the numerous cases on the docket.[5] This suggestion was complied with, and the Commission of Appeals, consisting of Sections A and B with three members each, was established, and has been renewed from time to time until it is apparently a permanent ancillary. Its members have the same qualifications as justices of the Supreme Court, and are appointed by the Supreme Court. The members receive a salary of $5,500 per year. The Commission hears "the submission of causes under such rules and regulations as may be prescribed by the Supreme Court and such court may adopt the opinion prepared by any member of the said Commission and make the same the judgment of the Supreme Court." [6]

*Court of Criminal Appeals.*—The supreme tribunal for criminal matters in Texas is the Court of Criminal Appeals. It consists of three judges who have the same qualifications and salary as justices of the Supreme Court, and who are likewise elected by the qualified voters of the State for terms of six years. Vacancies are filled through appointment by the Governor.[7]

[3] *Revised Civil Statutes,* I, art. 1728 (1925); *Laws,* 40th Leg., reg. sess., 214-216 (1927).
[4] *Constitution,* Art. V, sec. 3.
[5] *Reports of Subcommittees of the Central Investigating Committees of the House and Senate,* 35th Leg., 3d called sess., 673 (1918).
[6] *General Laws,* 41st Leg., 5th called sess., 112-114 (1930).
[7] *Constitution,* Art. V, sec. 4.

The Court of Criminal Appeals has appellate jurisdiction in all criminal cases, with the exception of cases appealed from an inferior court to a county court in which the fine imposed by the county court does not exceed $100.[8] It also has the power to issue writs of habeas corpus and other writs necessary to enforce its jurisdiction. The term of this court is the same as that of the Supreme Court, and it appoints a clerk for a four-year term.[9]

*Commission of Appeals for Court of Criminal Appeals.*—In 1925 the Legislature created a Commission of Appeals, consisting of two attorneys having the qualifications required for judges of the Court of Criminal Appeals, to aid the Court of Criminal Appeals in disposing of the business before it. The Commission is appointed by the Governor with the advice and consent of the Senate. Its members receive salaries of $5,500 per year. The Commission discharges such duties as are assigned to it by the Court; its opinions are submitted to the Court, and when approved have the same weight and legal effect as if originally prepared and handed down by it.[10]

*Courts of Civil Appeals.*—The State is divided into eleven Supreme Judicial Districts, in each of which there is a Court of Civil Appeals consisting of a Chief Justice and two Associate Justices with the qualifications requisite for membership in the Supreme Court.[11] These justices are elected by the qualified voters of their respective districts for terms of six years, and receive an annual salary of $5,160 each. A clerk is appointed by each court.

The appellate jurisdiction of the Courts of Civil Appeals extends to the following civil cases within the limits of their respective districts: (1) those of which the district court has original or appellate jurisdiction; (2) those of which the county court has original jurisdiction; and (3) those of which the county court has appellate jurisdiction when the amount in dispute exceeds $100, exclusive of interest and costs.[12] The judgment of the Courts of Civil Appeals is conclusive in all cases as to fact, and conclusive as to law with the exception of those cases over which the Supreme Court exercises appellate jurisdiction and certain others specifically exempted by statute.[13]

[8] *Code of Criminal Procedure,* art. 53 (1925).
[9] *Constitution,* Art. V, sec. 5.
[10] *General Laws,* 39th Leg., reg. sess., 269-270 (1925).
[11] These courts sit at Galveston, Fort Worth, Austin, San Antonio, Dallas, Amarillo, El Paso, Beaumont, Waco, Texarkana, and Eastland.
[12] *Revised Civil Statutes,* I, art. 1819 (1925).
[13] *Ibid.,* arts. 1820-1821.

*District Courts.*—The chief trial court in Texas is the district court. There are 127 ordinary and criminal district courts and two temporary special district courts.[14] The qualified voters of the district elect the district judge for a four-year term. He must be a citizen of the United States and of this State, a resident of the district for two years, and must have been a practicing lawyer or a judge of a court for four years. He receives a salary of $4,000 annually.[15]

The original jurisdiction of the ordinary district court extends to all criminal cases of the grade of felony; suits in behalf of the State to recover penalties, forfeitures and escheats; all cases of divorce; all misdemeanors involving official misconduct; suits for damages for slander or defamation of character; all suits involving the title to land and the enforcement of real estate liens; suits either in law or equity when the matter in controversy is $500 or more; and contested elections. The district courts have the power to issue writs of habeas corpus, injunction, mandamus, certiorari, and other writs necessary to enforce their jurisdiction. In a few districts special criminal district courts have been set up to handle criminal cases, leaving all civil matters to the ordinary district courts. The district courts have appellate jurisdiction and general control in probate matters over the county court of each county, and appellate jurisdiction and general supervisory control over the commissioners' court.[16]

In each county there is a clerk of the district court, elected by the qualified voters of the county for a term of two years.[17] In counties with less than 8,000 population the functions of the clerk of the district court are performed by the clerk of the county court.

In all cases in the district courts either party upon application in open court has the right of trial by jury. In civil cases no jury is used unless demanded by one party to the suit, who must pay the jury costs. Grand and petit juries in the district courts are composed of twelve persons. Nine members of a grand jury, however, constitute a quorum.[18]

*Administrative Judicial Districts.*—By an act of the Fortieth Legislature, for the purpose of expediting business in the various district courts, the State was divided into nine Administrative Judi-

[14] *General Laws,* 43d Leg., reg. sess., 120-121 (1933).
[15] *Constitution,* Art. V, sec. 7.
[16] *Revised Civil Statutes,* I, arts. 1906-1918 (1925).
[17] *Constitution,* Art. V, sec. 9.
[18] *Ibid.,* Art. V, secs. 10 and 13.

cial Districts.[19] One of the district judges within each administrative district is designated by the Governor as the Presiding Judge of his administrative district. The clerk of the district from which the Presiding Judge is selected performs the duties of the clerk of the administrative district.

The Presiding Judge calls an annual conference of the district judges of the administrative district for consultation as to the state of business in the several district courts, and for arranging the disposition of business pending on the various dockets. The district judges lay before the conference a list of cases pending in their courts and such other information as the conference may require. It is the duty of the Presiding Judge to assign any of the judges to hold special or regular terms of court in any county of the administrative district in order to dispose of accumulated business. The conference has the power to prescribe rules facilitating the order of trials and such other rules as are necessary to carry the act into operation.

To dispose of excess litigation the district judge of any district may extend the regular terms of his court and call special terms when necessary. The Presiding Judge of one administrative district may call upon the Presiding Judge of another district to furnish judges to dispose of litigation.

*County Courts.*—In each county of the State there is a county court, presided over by a county judge, who is required to be "well informed in the law," and who is elected biennially by the qualified voters of the county.[20] The county court has original jurisdiction of misdemeanors of which exclusive original jurisdiction is not given the justices' courts and when the fine to be imposed exceeds $200. Its exclusive original civil jurisdiction extends to cases in which the matter in controversy is at least $200 and does not exceed $500. It has concurrent original jurisdiction with the district court when the matter in litigation lies between $500 and $1,000. The county court exercises appellate jurisdiction in criminal cases in which the justices' courts have original jurisdiction, and in civil cases from the justices' courts when the judgment exceeds $20 exclusive of costs. Appeal may be had from the judgment of the county court to the Court of Civil Appeals or to the Court of Criminal Appeals.

General probate jurisdiction is exercised by the county court.

[19] *General and Special Laws,* 40th Leg., reg. sess., 228-231 (1927).
[20] *Constitution,* Art. V, sec. 15.

It probates wills, appoints guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards. Other similar powers are vested in the county court, and it also has the power to issue writs of habeas corpus and the other customary remedial writs to enforce its jurisdiction.[21]

The Legislature has the power to diminish or change, by local or general law, the civil and criminal jurisdiction of the county courts. To determine the powers and jurisdiction of a specific county court, it is often necessary to refer to the acts of the Legislature.[22] Exercising this power the Legislature has created "County Courts at Law" in several counties. These courts have been necessary to care for the business placed upon the county court in the more populous centers. Ordinarily the "County Court at Law" is vested with the civil and criminal jurisdiction of the county court, leaving the original court with its probate jurisdiction. In another instance a county has two "County Courts at Law," one exercising civil jurisdiction, the other criminal, and the original county court retaining its probate powers.

For each county a clerk of the county court is elected by the qualified voters for a two-year term. In counties with a population of less than 8,000 the county clerk is also clerk of the district court. He is always ex officio clerk of the commissioners' court and recorder for the county.[23]

*Justices' Courts.*—The lowest court in the Texas judicial system is that of the justice of the peace. Each organized county is divided into not less than four nor more than eight justices' precincts. In each precinct there is elected biennially a justice of the peace and a constable. In precincts where there is a city of 8,000 inhabitants or more, two justices of the peace are elected. Justices of the peace have jurisdiction in criminal matters where the penalty or fine to be imposed is not more than $200, and in civil cases where the amount in controversy is $200 or less, of which exclusive original jurisdiction is not given to some higher court. Appeals from the decisions of the justice court in civil matters may be carried to the county court in matters involving more than $20 and in all criminal cases subject to legislative regulation.[24] In

[21] *Constitution,* Art. V, sec. 16; *Revised Civil Statutes,* I, arts. 1949-1960 (1925).
[22] *Constitution,* Art. V, sec. 22.
[23] *Revised Civil Statutes,* I, arts. 1935-1948 (1925).
[24] *Constitution,* Art. V, secs. 18-19.

municipalities the recorders' courts have criminal jurisdiction concurrent with that of the justices' courts.[25]

*Prosecuting Officers.*—A State Prosecuting Attorney, appointed by the Court of Criminal Appeals, represents the State in all actions before that court. Elective district and county attorneys exercise similar functions before the district and county courts.

*Advisory Civil Judicial Council.*—After considerable agitation by the Texas Bar Association, the Forty-first Legislature passed a bill drafted by representatives of the Association creating an Advisory Civil Judicial Council.[26] The Texas advisory council is modeled closely upon similar councils in other states. It consists of the Chief Justice of the Supreme Court, two Justices of the Courts of Civil Appeals, to be designated by the Governor, two Presiding Judges of the Administrative Judicial Districts, two members of the Legislature (the chairman of the Senate and House committees on civil jurisprudence), seven practicing attorneys selected from a list of eight lawyers designated by the Bar Association, and two laymen, one of whom must be a journalist. All appointments are made by the Governor. The terms of the ex officio members end with their official term, while the other members serve for six years.

It is the duty of the council to make a continuous study of the organization, procedure, and results of the civil courts to the end that procedure may be simplified, business expedited, and justice better administered. The results of its researches are embodied in annual reports to the Governor and the Supreme Court in which recommendations are made for the betterment of the system.

The council has power to hold public meetings and require the attendance of witnesses and the production of books and documents. It may require reports from all civil courts of the State, administer oaths, and take testimony. It may appoint committees from its membership and delegate to them such of its powers as it deems necessary.

[25] The county courts, district courts, and criminal district courts have original jurisdiction of cases involving delinquent children. When such a court is acting in this capacity it is known as a "Juvenile Court." See *Revised Civil Statutes,* I, arts. 2329-2338 (1925) and *Code of Criminal Procedure,* arts. 1083-1093 (1925). The commissioners' courts are established by the judiciary article of the Constitution, but as they are in reality administrative bodies they are discussed in the chapter dealing with local government.

[26] *Laws,* 41st Leg., 1st called sess., 51-54 (1929); J. W. McClendon, "An Advisory Civil Judicial Council for Texas," *Proceedings Texas Bar Association,* XLVII, 33-49 (1928).

### CRITICISMS OF PRESENT SYSTEM

One does not have to go to the ranks of the professional reformer to find critics of the existing Texas judicial system. The most vigorous critics of the present arrangement are to be found among the lawyers and judges of the State. Their attacks are directed principally against (1) the judicial organization, (2) procedure, and (3) the method of selection and the tenure of the personnel.

*Organization.*—The disintegrated condition of the State judicial system is a very grave defect, in the opinion of many lawyers and judges. The Texas system is criticized, in the first place, because it is a two-headed arrangement. The Supreme Court is the final tribunal in civil matters, while the Court of Criminal Appeals is supreme in criminal causes. In several instances these two supreme courts have been in disagreement as to the constitutionality of acts of the Legislature.[27] Likewise differences in holdings are bound to appear in the decisions of the various Courts of Civil Appeals which must be rectified by the Supreme Court.

The lack of an integrating mechanism over the lower courts causes them not to form a single system, but to be an aggregation of uncorrelated and uncoördinated agencies. The act creating the Administrative Judicial Districts was a step in the right direction, but in some respects it complicated matters. Instead of a single system, there are nine systems. But there is even further lack of unity. Each judge, being politically responsible to the voters of his district, feels no great responsibility for the whole system, and a diversity in efficiency of law enforcement and in practice and procedure is likely to grow up. Inequalities in the distribution of work may exist, and there is no conference and consultation of the judiciary of the entire State to create a wholesome *esprit de corps.*[28]

The Supreme Court is too small to care for the many appeals which it must decide, while, on the other hand, it has been said

[27] In *Ex parte Lewis,* 73 S. W. 811 (1903), the Court of Criminal Appeals held unconstitutional a provision of the Galveston charter calling for the appointment of certain city officials by the Governor, while in *Brown v. Galveston,* 97 Tex. 1 (1903) the Supreme Court upheld the same provision. In *Ex parte Francis,* 165 S. W. 147 (1914) and *Ex parte Mode,* 180 S. W. 708 (1915), the Court of Criminal Appeals upheld a local option pool hall law, while in *Ex parte Mitchell,* 177 S. W. 953 (1915) the Supreme Court declared the same law invalid.

[28] C. S. Potts, "Unification of the Judiciary; A Record of Progress," *Texas Law Review,* II, 445-463 (1924).

that there are too many judges of the lower courts. "For the population and business it is doubtful that any state in the Union has as many judges as Texas, which has about four hundred and twenty, not counting magistrates and justices of the peace." [29] This large organization, together with other factors, makes the expense of the judiciary very great. The total cost of operation of the appellate and district courts to the State in 1931 was $2,686,460.[30] This sum does not include the expenditures of the county, justice of the peace, and corporation courts.

*Procedure.*—Procedure in the Texas courts is regulated almost entirely by legislative act. An intricate body of procedural law has been built up, and as a result the courts have come to stress procedural form rather than substantive rights. Piecemeal legislation has failed to remedy the cumbersomeness of the body of civil procedure, and consequently it has not developed as rapidly as the demands upon it. "It is held in the iron grip of hundreds of years of precedents, and of statutes, many of which were passed thirty, forty, sixty, seventy-five years ago, for the regulation of court quarrels arising under frontier and pioneer conditions. . . . We are still trying in 1924 to handle court business with the primitive tools made in 1836." [31]

The control of judicial procedure by statute is wrong in theory, it is asserted. The judiciary has nothing to do with the rules of legislative procedure. That is left to the Legislature. They believe that the judiciary should likewise frame its own rules of procedure, for it is better fitted by training, experience, and knowledge to do this. The numerous appeals and retrials permitted under our system of procedure result in vexing delays and unnecessarily great expense, often defeating justice entirely. Every possible appeal is usually taken. "In Texas the lawyers seem more persistent [than in Missouri, Kentucky, Arkansas, and Tennessee], for the feeling here often is that the fight is merely begun with the first trial." [32]

When cases reach the appellate courts, they are scrutinized with great care to insure that procedural statutes have been minutely followed and with less emphasis upon the rendering of substantial

[29] S. B. Dabney, "Judicial Reconstruction," *Texas Law Review,* VI, 307 (1928).
[30] *The Government of the State of Texas,* Pt. 4: 6.
[31] R. S. Baker, "The Bar Association's Legislative Program—Judicial Control of Procedure," *Texas Law Review,* II, 422-434 (1924).
[32] S. B. Dabney, "Judicial Reconstruction," *Texas Law Review,* VI, 308 (1928).

justice. In 1917 it was estimated that of the cases appealed to the Courts of Civil Appeals, about forty per cent were reversed, and approximately seventy-five per cent of the reversals were for technical or procedural errors.[33]

The jury has usurped the rightful position of the trial judge, and furthermore is an anachronism. The position of the judge has been reduced to that of a "mere moderator." He may not comment upon the evidence, the credibility of witnesses, or guide the jury in its deliberations. The grand jury has generally become the rubber stamp of the prosecuting attorney, and if it wishes, it may refuse to indict and substitute its will for that of the State. The civil trial jury is overwhelmed by the technicalities of a complicated controversy, and its verdicts in such instances are often unjust. The selection of the criminal trial jury is a long, drawn out process, and the results of its operation subject the courts of justice to ridicule.

*Personnel.*—Popular election brought the judiciary to its present low estate, in the opinion of most critics. An able judge must be an expert and a scholar, and "hand-shaking, baby-kissing campaigns" are not made by genuine students of the law to secure a colorless position carrying with it a much lower salary than private practice would bring. One attorney has described with sadness the melancholy spectacle of a candidate for the dignified and honorable post of Chief Justice of the Supreme Court of the State of Texas standing on the sidewalk, handing out cards and campaign literature to the passers-by.[34] Even when men really learned in the law offer themselves for election, the electorate can not be relied upon to choose them. The independence of the judiciary is destroyed by popular election, and the judge is forced to administer justice to please the dominant faction in his jurisdiction.[35]

The short tenure of judges, especially in the lower courts, practically subjects their judicial policies to popular referenda. Although judges in Texas receive fairly good compensation, the salaries are not large enough to command the continuous services of able judges. Most capable judges retire after a relatively short service to a lucrative private practice. The effect of these factors has been to reduce public confidence in the judiciary, probably with a modicum of justification. Besides creating a disrespect for

[33] M. S. Brame, *The System of Courts and the Administration of Justice in Texas,* 81 (Master's Thesis, University of Texas, 1917).

[34] *Proceedings Texas Bar Association,* XLII, 31 (1924).

[35] C. P. Patterson, "The Courts of the Southwest," *Southwestern Political Science Quarterly,* III, 82-83 (1922).

law in general, this condition stimulates appeals which are usually justified, it being a notorious fact that a large portion of cases appealed from the trial courts are reversed. "If our trial courts had more the confidence of lawyers and litigants, there probably would not be half these reviews." [36]

## SUGGESTED REFORMS

*Movement for Judicial Reform.*—Almost continuously since the adoption of the present judiciary article of the Constitution in 1891, there has been dissatisfaction with its provisions. By 1910 the intermittent mutterings had assumed the form of a fairly persistent movement for judicial reconstruction. In the *Proceedings* of practically every convention of the Texas Bar Association since that time, there is to be found some proposal for reform or a discussion of some of the defects of the judicial system.

The Thirty-third Legislature in 1913 proposed a constitutional amendment which, if adopted, would have authorized more than one judge in a district and raised qualifications for district judges from four to six years' practice. The next Legislature submitted an amendment increasing the Supreme Court to five members, which was also defeated.[37]

During the following three years sentiment for judicial reorganization grew rapidly and the Texas Bar Association at its 1918 meeting practically unanimously approved a draft of a judiciary article to be recommended to the Legislature. This article was largely the work of Samuel B. Dabney, of Houston, who had made a first-hand study of the Canadian judicial system. This proposal would have effected a thorough reorganization of the judicial system, its merit being indicated by the fact that it was highly praised by Dean Roscoe Pound.[38] A constitutional amendment which would have enabled the Legislature to adopt most of the suggestions of the Bar Association passed the House, but died in a Senate committee.[39]

The frequently repeated proposal of the Bar Association that nominations for judicial offices be made by convention instead of by direct primary was considered by the Legislature in 1921. The

[36] S. B. Dabney, "Judicial Reconstruction," *Texas Law Review,* VI, 307 (1928).
[37] Irvin Stewart, "Constitutional Amendments in Texas," *Southwestern Political Science Quarterly,* III, 151 (1922).
[38] *Journal of the American Judicature Society,* II, 131-144 (1919).
[39] *Senate Journal,* 36th Leg., reg. sess., 1433 (1919).

Senate passed a bill to that effect which died in the House.[40] The Thirty-ninth Legislature failed to pass by the necessary two-thirds vote a resolution submitting a constitutional amendment increasing the size of the Supreme Court, and the House Committee on Constitutional Amendments reported adversely a Senate Joint Resolution proposing an increase in the membership of the Court of Criminal Appeals to five justices.[41]

Governor Dan Moody, who has been a consistent advocate of judicial reform, recommended to the Fortieth Legislature that it submit to the people a general revision of the judiciary article of the Constitution. He suggested that the size of the Supreme Court be increased to nine justices and that it be given power to establish rules of procedure in civil cases with the aid of an advisory body. He advocated the limitation of the right of appeal in criminal cases, and the endowment of the Supreme Court with power to require reports from the district judges as to the status of their dockets and to assign district judges to crowded courts to expedite business.[42] An amendment was proposed enlarging the Supreme Court, allowing the Legislature to increase the size of the Court of Criminal Appeals, and empowering the Supreme Court to assign district judges, but it was voted down by the people.[43] The same session adopted an act giving a certain amount of unity to the judicial system by the creation of the Administrative Judicial Districts, following closely a recommendation made by the Bar Association in 1924.[44]

In his message to the Forty-first Legislature Governor Moody renewed the suggestions made to the preceding Legislature. Enlargement of the Supreme Court, restriction of the right of appeal in criminal cases, abolition of terms of district courts and the substitution of continuous sessions, and the reform of the fee system were advocated.[45] An amendment enlarging the Supreme Court was submitted but failed to carry in the popular referendum.[46] This Legislature adopted the proposal of the Bar Association to create an Advisory Civil Judicial Council.

Continuous terms of the Supreme Court were authorized by

[40] *Senate Journal,* 37th Leg., reg. sess., 1204 (1921).
[41] *House Journal,* 39th Leg., reg. sess., 1441, 1826 (1925).
[42] *Ibid.,* 40th Leg., reg. sess., 102-104 (1927).
[43] *Laws,* 40th Leg., reg. sess., 468-472 (1927).
[44] *Proceedings Texas Bar Association,* XLIII, 31 (1924).
[45] *House Journal,* 41st Leg., reg. sess., 29-30 (1929).
[46] *Laws,* 41st Leg., reg. sess., 711-713 (1929).

a constitutional amendment adopted in November, 1930.[47] A number of specific recommendations of the Civil Judicial Council as to improvements in civil procedure have been accepted by the Legislature, but that body has given scant consideration to the Council's proposals for the nomination of all district and appellate judges by conventions and for a constitutional amendment providing a unified court system.[48]

It is remarkable that there could be so much fruitless effort. The meager results of the movement are partly explained by the lack of unanimity within the Bar Association itself, and the further fact that comparatively few of the lawyers of the State are actively affiliated with the Association. The apathy of the electorate and potent "grudge opposition" have defeated several of the proposed constitutional amendments.

*Judicial Reorganization.*—Practically all legal experts are agreed that one of the fundamental reforms necessary in our judicial system is a simple, unified court organization with a responsible administrative head.[49] The vogue of this concept is an outgrowth of the epoch-making English Judicature Acts of 1873 and 1875.[50] The general principle received the approval of a committee of the American Bar Association in 1909,[51] and the idea has been reduced to concrete proposals by the American Judicature Society.[52] The unification of the federal court system has served as a powerful stimulus to the reorganization of the State courts. The adoption of the collegial or unit system for the Texas court organization would involve the elimination of all jurisdictional lines between courts by merging the whole judicial power in one "general court of judicature." All of the judges of the State would be included in the personnel of this court, which would be under the supervision of the chief justice, whose duty would be to keep the whole machinery of justice moving along in an orderly and speedy manner.[53]

[47] *General Laws,* 42d Leg., reg. sess., XVI (1931).

[48] *Dallas Morning News,* February 28, November 29, 30, 1932; February 2, July 9, 14, 1933.

[49] See H. H. Brown, "Five Points in Judicial Reform," *Journal of American Judicature Society,* XII, 124-126 (1929), and S. B. Dabney, "Court Organization; the Superiority of the Unit or Collegial System to the Existing Divided System," *Texas Law Review,* V, 377-391 (1927).

[50] A. M. Kales, "The English Judicature Acts," *Journal of American Judicature Society,* IV, 133-146 (1921).

[51] *Report of American Bar Association,* XXXIV, 578 ff. (1909).

[52] "Second Draft of a State-Wide Judicature Act," *Bulletin of American Judicature Society,* VII-A (1917).

[53] The Texas Supreme Court has refused to exercise administrative powers

Proposals for the establishment of the unified system usually provide for several permanent branches of the single great court. A typical reorganization scheme is one recently made by S. B. Dabney.[54] He would vest the judicial power in a supreme court, district courts, and magistrates' courts. The supreme court would consist of one chief justice and not less than eight associate justices to sit in at least two divisions, civil and criminal, with as many more sections as might be necessary. The present supreme judicial districts would be retained and the Associate Justices of the Courts of Civil Appeals would become circuit judges with administrative powers over the district courts within their supreme judicial district. A district court would be established for each organized county, such court to be open throughout the year and to be presided over by a circuit judge, a district judge, a justice of the supreme court, or a probate judge. The circuit judges of each supreme judicial district would meet periodically to assign themselves and the district judges to the various district courts. The district court would assume the jurisdiction of the present district and county courts and could sit in divisions, *en banc,* or merely operate with a single judge. With this flexible organization any situation could be met. Magistrates' courts would be created under this scheme to handle present justice court cases. Circuit justices might be called up to sit on the supreme bench to relieve congestion.[55]

The proponents of such an organization claim that it would be sufficiently flexible to cope continuously in an effective fashion with the problem of the administration of justice. Crowded dockets in one locality could be readily cleared by special judges dispatched to the scene by the administrative head. Judges might be

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over the court system delegated to it by the Legislature. Such duties, it said, have no relation to its judicial duties "as constitutionally defined." Furthermore, the Court was crowded with litigation making it practically impossible for it to assume these additional functions.—*In re House Bill No. 537,* 256 S. W. 575 (1923).

[54] S. B. Dabney, "Judicial Reconstruction," *Texas Law Review,* VI, 302-326 (1928).

[55] This plan apparently would prevent the creation of a top-heavy and unwieldy structure by the element of devolution included. The idea to have circuit judges perform administrative duties for their districts is an adaptation of the present administrative judicial districts and also solves the problem of what to do with the justices of the Courts of Civil Appeals. The plan more practically fits the unified system to a state with the territorial extent of Texas. Cf. *Journal of American Judicature Society,* II, 133-144 (1919), where an earlier proposal by Mr. Dabney is printed.

called up from the lower courts to aid the supreme court in times of peak load. A specialized personnel could be developed because of the power to assign judges to certain kinds of cases. In short, such an organization would be truly a system which could be constantly and conveniently adjusted to the ever changing problems faced by the courts.

The judicial organization of the State is added to by almost every session of the Legislature in an effort to make it adequate for the exigencies of the situation, but legislative control is intermittent and rigid. Experience has shown that a Texas village may become a flourishing petroleum metropolis between sessions of the Legislature. The local courts get far behind on their dockets before the Legislature meets and creates another district court. The unified court could immediately fit itself to such a situation by the assignment of additional judges. In an effort to relieve the Supreme Court, various Courts of Civil Appeals have been created from time to time. Every first-class city constantly lobbies for such a court. The creation of these appellate courts does not touch the fundamental problem—the condition of the trial court and the procedure which makes necessary and possible so many appeals and reviews.

*Procedural Reform.*—The primary change involved in a thorough reform of procedure would be a change in the rule-making agency. The Texas Bar Association has consistently advocated that the rule-making power be vested exclusively in the Supreme Court aided by a committee of lawyers.[56] Lawyers and judges, being expert in the law, would be able to frame a system of procedure far superior to rules jammed through the Legislature. The minutiæ of legal procedure are to be conjured with only by the lawyers, but some of the reforms of a general nature which have been advocated are as follows: (1) a reduction in the number of retrials and appeals; (2) emphasis upon substantial justice rather than procedural exactitudes; (3) directory rather than mandatory rules of procedure; and (4) restoration of the presiding judge to a position of dominance in the court room.

The position of the jury in court procedure has been the subject of much recent debate and discussion. The trial jury is not mandatory in civil cases in Texas, but a demand for it is usually made by one party whose interest it is to do so. With an increased ability of the bench, the civil trial jury would probably decline in impor-

[56] *Proceedings Texas Bar Association,* XLIII, 29 (1924); *ibid.,* XLIV, 57 (1925); *ibid.,* XLV, 171 (1926).

tance. Nevertheless, in the hearing of complicated and technical disputes the ordinary jury is very much at sea, and consequently its verdict is more or less guesswork. The abandonment of the trial jury in the more important criminal cases is not being seriously proposed. It would, however, be greatly aided in its deliberations by empowering the judge to instruct it on both the law and the evidence. The disposition of the grand jury is a matter of debate. One group avers that it has become merely a rubber stamp and consequently a useless accessory to the prosecuting attorney. The others point out that the grand jury renders a highly beneficial service in adapting to practical conditions and expediencies highly idealistic legislative acts which might be obeyed uniformly only in a Utopian society.[57]

*Improvement of Personnel.*—In the opinion of certain advocates of judicial reform, the paramount need is the improvement of the personnel of the judiciary. "No system of practice and procedure, whether made by legislators or courts," says Judge H. D. McDonald, "can make good judges out of poor ones, and only a competent judiciary can render efficient service under any system." [58] The problem is, therefore: How may capable men be attracted to the bench?

As has been indicated, the selection of judges by popular election does not attract the best of talent. Among the alternatives are: (1) appointment by the chief executive for specified terms or for life; (2) election by the Legislature; (3) appointment by a chief justice popularly elected; and (4) nomination by the Governor or by the bar. Most of the leading legal scholars are inclined to believe that appointment by the executive is the best method of selection.[59] To espouse such a principle would, of course, not be politically expedient in Texas, and is, therefore, out of the question as a practical proposition. One of the leading lawyers of the State has ventured the suggestion of a bar primary.[60] The Bar Association has in recent years attempted to secure the adoption of an act providing for a return to the convention method of nomination

[57] See C. P. Patterson, "The Jury System of the Southwest," *Southwestern Political and Social Science Quarterly,* IV, 221-237 (1924).

[58] *Proceedings Texas Bar Association,* XLIII, 31 (1924).

[59] J. P. Hall, "The Selection, Tenure and Retirement of Judges," *Journal of American Judicature Society,* III, 33-52 (1919).

[60] A. H. McKnight, "How Shall Our Judges Be Selected?" *Texas Law Review,* V, 470-473 (1928).

for judicial officials. In one meeting of the Association it was argued that conventions are ordinarily dominated by lawyers, who, being particularly interested in securing capable judges, and, moreover, knowing a good judge from a demagogue, would nominate able and learned men to the bench.[61] This proposition has merit when the elevating effect of strong bar endorsement upon the election of the judiciary of other states, particularly Wisconsin, is considered.

Other angles of the personnel problem are the questions of tenure, retirement, and compensation. The terms served by judges in Texas are generally thought to be entirely too short. The public is deprived of the services of judges who make such work the career of a lifetime. Usually judgeships are just stepping stones in an individual's career. By increasing compensation and providing an adequate retirement system it is likely that the problem of tenure would be solved. Texas judges receive about the average salary paid to state judges, but far less than the maximum. New York, for instance, pays her chief justice $25,000 annually. Federal district judges are paid $10,000 per year. If judges were appointed for life or stood for reëlection indefinitely, some system of retirement would have to be established. The lack of such a system is probably one reason for short tenure. The problem of deciding when a judge should be retired because of old age or incapacity is an embarrassing one, but after such retirement adequate pensions should be provided.

Lawyers themselves are officials of the courts and they are constantly endeavoring to raise the standards of their profession. In the first place, educational qualifications to secure a license to practice are being raised. Second, more effective means are being sought to purge the profession of the less desirable element already practicing. The most commonly proposed panacea is the "self-governing bar." Under this plan the State Bar Association would be incorporated with powers something like those of the medieval craft guilds and would include in its membership all the lawyers of the State. This corporation would have the authority to determine the qualifications requisite to practice in the State, and to administer examinations for admission to the bar. It would have further power to disbar its members and to discipline them by reproval or by sus-

[61] See *Proceedings Texas Bar Association,* XLV, 171 (1926), and *ibid.,* XLIII, 30 (1924).

pension from practice.[62] The adoption of such a plan has been advocated in Texas from time to time.

In conclusion, it may be said that some of the proposals for legal reform and reconstruction may be rather visionary and somewhat impractical, but their proponents earnestly support their ideas and cite the experiences of other jurisdictions with similar arrangements. Nevertheless, it may be accepted as an axiom that piecemeal and partial reform will be about as valueless as none. An ideal organization or machine will not function without an expert personnel to manipulate the controls. Neither can expert operators manage a perfect machine hampered by a set of obstructive and archaic rules of procedure. To be effective any change should readjust the entire system. One minor adjustment requires some compensatory loosening or tightening in a different part of the mechanism, and on and on forever. What is needed is comprehensive reconstruction, thorough procedural reform, and a general improvement of personnel.

### REFERENCES

A satisfactory discussion of the organization and work of state courts from a general viewpoint is to be found in C. P. Patterson, *American Government,* rev. ed., Chs. XXXIX and XL (1933). Discussions of a general nature may be found in other texts on American government and the various works on state government. See also Judd and Hall, *The Texas Constitution,* Chs. VIII, IX. A plan for the reorganization and reform of the Texas judicial system is presented by S. B. Dabney, "Judicial Reconstruction," *Texas Law Review,* VI, 302-326 (1928). In each number of the *Texas Law Review* a department, edited by A. H. McKnight, is devoted to suggestions for judicial reform. This review frequently contains articles on questions of judicial organization and procedure by professors and practitioners of the law. The *Proceedings* of the conventions of the Texas Bar Association carry stenographic reports of the debates on moot questions of judicial reform. The *Journal of the American Judicature Society* contains articles by the outstanding authorities on the administration of justice and also carries news of the movement for judicial reconstruction. The *Reports* of the American Bar Association and the publications of other legal organizations may also be examined with profit. The four annual reports of the Advisory Civil Judicial Council contain valuable judicial statistics and drafts of bills proposed for adoption. Part 4 of *The Government of the State of Texas* discusses the judiciary and the law officers and presents a proposed plan of judicial organization and administration.

[62] "Redeeming a Profession," *Journal of American Judicature Society,* II, 105-124 (1918); "Sanitation of the Bar," *ibid.,* IV, 5-14 (1920).

# CHAPTER IX

## PARTIES, SUFFRAGE, AND ELECTIONS

### PARTIES AND PARTY ISSUES

In the Republic of Texas there were no organized political parties in the sense in which the term is understood today. Conditions were essentially those of a pioneer community, and the inhabitants had been unified only by their struggle for independence from Mexico. Political issues under such conditions naturally centered around military personalities. As the people were almost unanimous in their desire for annexation, this was not a party issue within the Republic as it was in the United States.

After annexation the political discussions in the State continued to be local in character, centering around the boundary dispute, the frontier problem, and the State debt; and until after the compromise of 1850, which settled the first and last, national issues were of secondary importance.

The question of the boundary, however, gradually became inseparably connected with the slavery controversy then going on in the United States. The early Anglo-American colonists had brought slaves with them, and Texas entered the Union as a slave state. It was only natural that in the course of pre-war national politics the Texans were determined to protect this institution.

The Whig party hardly secured a foothold in Texas and was never able to challenge Democratic control of State offices. On the other hand, the rapid rise of the American or Know-Nothing party resulted in a strengthening of the embryonic Democratic organization. Thus it was inevitable that in 1860 Texas should find herself in the Confederacy group.

During the Civil War and Reconstruction, political life was very abnormal, and it was not until 1873 that the citizens of Texas again assumed control of public affairs. Slavery as an issue was dead and the Indian question was receding, but the enfranchisement of the former slaves introduced into politics a new element, and strengthened the hold of the Democratic party on the State.

The Republican party, headed by former Governor Davis, gathered these enfranchised Negroes into its fold, but even with this added strength it continued to be a minority party, having little influence on the course of politics.

Since the record of the Republican party precluded the possibility of using it to further the discontented agrarian interests, the period of 1878-1900 witnessed the rise in succession of numerous minor parties; they failed, however, to secure any firm foothold and soon disintegrated.[1]

Since the turn of the century a significant change has taken place. Spectacular leaders have largely passed from the political stage, few vitally important issues have been submitted to the people, and the eligible voters have participated only in the Democratic primaries for nominations to State offices. Factions within the Democratic party have developed, but few have been important in so far as significant political consequences are concerned.[2]

### DEVELOPMENT OF NOMINATING METHODS

During the formative period of party organization, nomination for local offices was secured by personal declaration or self-announcement, by the informal caucus, or by the action of the town or county mass meeting. These same informal nominating methods were used for district and State offices. Later the mixed or mongrel convention, composed of members of the Legislature and citizens from different parts of the State, was introduced.[3]

By 1856 permanent party organization had been effected, and the Democratic State convention of that year had delegates present from fifty-four counties; by allowing members of the Legislature to represent thirty-seven counties without delegates, only eight counties in the State were unrepresented at this party conclave. Two years later, however, members of the Legislature were refused admittance, and the pure delegate convention became permanently established as a method of nomination. In the previous

[1] R. C. Martin, *The People's Party in Texas,* University of Texas Bulletin, No. 3308 (1933); "The Grange As a Political Factor in Texas," *Southwestern Political and Social Science Quarterly,* VI, 363-384 (1926); "The Greenback Party in Texas," *Southwestern Historical Quarterly,* XXX, 161-177 (1927).

[2] The *Texas Weekly* gives a brief account of candidates and issues in the primaries, from 1906-1930, I, 6-9, 12 (July 26, 1930).

[3] E. W. Winkler, *Platforms of Political Parties in Texas,* University of Texas Bulletin, No. 53, 18 (1916).

year the two-thirds rule had been adopted for nominations; it continued in force until 1894.[4] Thus a system of representative party government developed and, until the direct primary was introduced, nominations continued to be made by convention except where the "Crawford County System" was introduced by party rule for local nominations and for the instruction of delegates to the convention.[5]

Owing to the fact that the convention system seemed to lend itself to manipulation by individuals who were in politics for purely selfish reasons, public opinion began to favor some form of regulation. Beginning in 1895 each Legislature has given some attention to the regulation of the methods by which political parties nominate their candidates for office. The most elaborate and comprehensive statute is the primary law of 1905. It was very drastic and sweeping in both scope and effect, since it made the direct primary mandatory for nominations to State, district, and county officers in the case of all parties "that cast 100,000 votes or more in the last general election." [6] This act regulated primary elections and suffrage in great detail and was a radical departure from previous attempts to regulate the nominating procedure of political parties.

Each succeeding Legislature has endeavored to strengthen the law in one or more respects.[7] The present party pledge was adopted in 1907. In the same year a statute was enacted which further strengthened the provision against political activities of corporations and was an attempt to curb the liquor interest within the State. In 1913 a law provided for the nomination of presidential electors and delegates to the national convention by means of a preferential presidential primary. This law, however, was declared unconstitutional by the State Supreme Court because it provided for the holding of the election at public expense, and the court did not think that such elections were for a public purpose.[8] Majority rule for nominations was required for all State and district offices by act of 1918. This provision was very similar to the requirement already in force regarding the nomination of United States Senators, providing that if no candidate received such a majority

[4] *Ibid.*, 40-41, 338.
[5] *Dallas Morning News,* November 20, 1922.
[6] *General and Special Laws,* 29th Leg., 1st called sess., ch. 11 (1905).
[7] *General and Special Laws,* 30th, 33d, 35th, 38th, and 40th Legislatures, regular and called sessions (1907-1927).
[8] *Waples v. Marrast,* 184 S. W. 180 (1916).

in the first primary, a second was to be held for the two highest contestants in the first.

### SUFFRAGE

The Constitution and laws prescribe the qualifications for an elector in the State as follows: age of twenty-one years, citizenship of the United States, residence in the State for one year next preceding an election and for the last six months in the county in which he offers to vote, and payment of a poll tax (State and county) if subject thereto, prior to February 1, preceding the election, or possession of an exemption certificate, if exempt, and one is required. Those disqualified from voting include: persons under twenty-one years of age, idiots and lunatics, paupers supported by any county, persons convicted of any felony, and soldiers, marines, and seamen employed in the service of the army or navy of the United States.[9]

Women were permitted to vote in the primaries by an enactment of 1918, even though they had not yet been given suffrage by the nineteenth amendment to the Federal Constitution or by the State Constitution. The law was upheld in *Koy v. Schneider* on the grounds that the suffrage qualifications in the Texas Constitution applied only to general elections and not to the primaries.[10] Of exceptional interest was the attempt legally to bar the Negro by the "White Primary" law of 1923; this was declared unconstitutional by the Supreme Court of the United States in 1927.[11] Subsequently the invalidated statute was replaced by one which allowed the State executive committee to prescribe the qualifications of its own members; this was also declared unconstitutional by the same court as a device for barring Negroes from party primaries.[12] The Democratic State convention of May, 1932, although a presidential convention, passed a resolution to apply to the 1932 primaries, similar to that passed by the State executive committee. Suit was brought by the Bexar County Negro voters league against the Bexar County executive committee testing this resolution, and after much litigation the case finally reached the Supreme Court of Texas, but was thrown out on a technicality, leaving the question of the right of the Negroes to vote in the primary still unsettled.[13] It has been

[9] *Constitution,* Art. VI.
[10] 221 S. W. 880 (1920).
[11] *Nixon v. Herndon,* 273 U. S. 536 (1927).
[12] *Nixon v. Condon,* 52 S. Ct. 485 (1932).
[13] 53 S. W. (2d) 123 (1932).

assumed by party leaders, however, that the State convention has "inherent" power to bar Negroes from the party primaries. Regardless of the final solution, there are other well-known and more practical methods of barring Negro participation in the primaries, such as white men's unions. The fear of Negro participation is not, however, primarily based on race prejudice, but is rather the fear of white machine domination of the Negro balance of power. The problem of the Negro in Texas politics has never been and can not now be dealt with on the basis of abstract considerations; rather must the particular circumstances of white politics concerning the Negro be the basis for any intelligent analysis of the "white primary." [14]

### OPERATION OF ELECTION LAWS

Since, in a one-party state, nomination in a primary of the dominant party ordinarily is equivalent to election, the general election for state and local offices is a mere formality. This is true in Texas, although the general election has gained somewhat in importance since 1924. Our discussion of the election laws will deal principally with the regulation of primary elections.

*Classification of Parties.*—By the primary law political parties are divided into different classes, and are regulated according to their classification.[15] Parties which cast 100,000 or more votes in the preceding general election must nominate candidates for all offices, including party executive officers, by primary elections. A choice of nomination by primary and nomination by convention is given to those parties which polled as many as 10,000 and less than 100,000 votes for Governor in the preceding general election, but in either case "the State Committee of all such parties shall meet . . . on the Second Tuesday in May, and shall decide, and by resolution declare, whether they will nominate State, district and county officers by convention or primary elections, and shall certify their decisions to the Secretary of State." [16] A third class of

[14] For a discussion of the Mexican in Texas politics, see O. D. Weeks, "The Texas-Mexican and the Politics of South Texas," *American Political Science Review,* XXIV, 606-627 (1930) and "The League of United Latin-American Citizens: A Texas-Mexican Civic Organization," *Southwestern Political and Social Science Quarterly,* X, 257-278 (1929).

[15] The following summary of election laws and practice is taken, unless otherwise indicated, from *Texas Election Laws With Annotations,* published by the Attorney-General's Department in 1928.

[16] The Democratic party regularly holds primary elections. The Republican party has held primary elections twice, in 1926 and in 1930, occasioned by the polling of over 100,000 votes by their nominee for Governor in the general

parties, those having no State organization, is provided for in the primary law. Such parties may make nominations for local offices either by primary election or by county convention; this, however, must be done on the regular primary election day. Certification of such nominations must be made to the county clerk and will be placed on the printed official ballot after the receipt of a written application "signed and sworn to by three per cent of the entire vote cast in such county at the last general election."

Provision is also made for non-partisan and independent candidates, whose names may be placed on the general election ballot by a written petition mailed to the Secretary of State within thirty days after the primary election and accompanied by the written consent of the candidate. Similar procedure may also be used for the nomination of municipal officers.

*Electoral Machinery.*—On the fourth Saturday in July in even-numbered years the first primary is held for nomination to State, district, and county offices. Since an absolute majority of the total vote cast for an office is required to secure the nomination for a State or district office, a second primary is often necessary. In this event it must be held on the fourth Saturday in August with only the two highest contestants of the first primary as candidates for a given office. Nomination for a county office may be secured on a mere plurality unless the county executive committee decides in favor of the majority rule and provides for a run-off election.

With regard to the actual voting, the law provides that the primaries of no two political parties may be held within less than one hundred yards of each other. The requirements for general suffrage apply to the primary elections with the addition of a uniform primary test fixed by statute and such other membership qualifications as the State executive committee may prescribe.[17]

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elections of 1924 (294,970) and 1928 (120,504). In other years the Republican executive committee has decided to nominate the party candidates by convention. Only 9,792 votes were cast in the Republican primary of 1930 for candidates for Governor. (*Texas Almanac,* 1931, 240, 259.) In the general election of 1932 the Republican candidate for Governor polled 317,807 out of a total of 859,575 votes.

A record vote of 973,041 was cast in the first Democratic primary of 1932 for the Lieutenant-Governor, who was unopposed. The total vote for Governor in the same primary was 967,928, and in the second primary, 949,773 (approximate). (*Texas Weekly,* VIII, 1 (Aug. 13, 1932), 4 (Sept. 3, 1932).)

With a population of 5,824,715 in 1930, Texas had an estimated qualified electorate of 1,199,931 in 1932. Slightly over 37 per cent of those eligible actually qualified. (*Dallas Morning News,* April 3, 1932.)

[17] The test required for participation in all primary elections today reads:

In recent years the practice of bolting a part of the regular ticket has been a cause of much concern to party leaders. In the 1924 election the Republican nominee for Governor received a total vote far in excess of the normal Republican strength in the State and doubtless prepared the way for the successful 1928 bolt in the presidential election which resulted in much litigation. Undoubtedly much of the controversy was due to the incompleteness and ambiguity of the election laws, necessitating endless court decisions interpreting the meaning of the statutes. In brief it may be said that the courts have interpreted the membership test as being more restrictive upon candidates for public office and party officials than upon the voter.[18]

The chairman of the county executive committee of the party with the approval of a majority of the committee must appoint for each precinct a presiding officer of elections. This officer must select an associate judge and two or four clerks to aid him in holding the election. Two election supervisors may be appointed by any one-fourth of the candidates to be voted on in the primary. All election officials must take an oath to discharge their respective duties faithfully.

The primary vote is taken by official ballot which must be printed on white paper in black ink and contain nothing but the "test" and the name of the party at the head of the ticket. The names and residences of the candidates are printed beneath the title of the office being sought. The position and order of the names of the candidates are determined by lot by the county executive committee. The procedure for voting in the primaries is very similar to that in the general election. The voter upon requesting a ballot gives his name to one of the clerks, who must then find it on the poll list and signify that fact to the judges of the election, giving at the same time the number of the voter.[19] A ballot, which previ-

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"I am a —— (inserting name of political party or organization of which the voter is a member) and pledge myself to support the nominee of this primary."

[18] See *Cunningham v. McDermett,* 277 S. W. 218 (1925); *Briscoe v. Boyle,* 286 S. W. 276 (1926); *Gilmore v. Waples,* 188 S. W. 1037 (1916); *Love v. Buckner,* 49 S. W. (2d) 425 (1932); *Scurry v. Nicholson,* 9 S. W. (2d) 747 (1928); *Westerman v. Mims,* 227 S. W. 180 (1921); *Love v. Taylor,* 8 S. W. (2d) 795 (1928); *Love v. Wilcox,* 28 S. W. (2d) 515 (1930).

[19] Voters are numbered consecutively. If the voter is in a city of ten thousand inhabitants or more, he must present his poll tax receipt or exemption certificate or take an affidavit that he has secured one or the other; otherwise, his name appearing on the poll list is sufficient proof of his eligibility to vote.

ously has been endorsed on its back with the judge's signature, is then handed to the voter by the presiding judge, and the clerk in charge of the poll list must then stamp or write opposite the voter's name on this list the words "Primary—Voted" and the date of the primary election. The ballot is then marked by the voter in a private booth provided for that purpose. The voter marks out all names for which he does not desire to vote. Ballots may be counted simultaneously with the voting. Absentee voting is permitted.

*Party Committees.*—By law the committees of political parties are made responsible for providing for and holding all primary elections, as well as for making canvasses of the returns. As has already been indicated, the county executive committee selects the election officials. It is the duty of this committee to make all other preliminary arrangements for the holding of the primary election, which it usually does through a sub-committee, particularly in the provision of the official ballot and other election supplies, including poll lists furnished the committee by the county tax collector, and distributed to the election officials of the various precincts at least twenty-four hours before the time for the opening of the polls. The county committee is composed of the chairman, who is elected at the preceding primary from the county at large, and the precinct chairman selected by the party voters of each precinct in the county. Aspirants to the nomination for county or local offices may have their names placed on the official primary ballot by filing a personal request, or upon petition by any twenty-five qualified voters, with the county chairman on or before the Saturday preceding the third Monday in June, provided that, if the latter method is used, the candidate endorses the petition showing his willingness to run in the primary. Moreover, the names of all State and district candidates are certified to the county committee by the State executive committee and the district chairman for printing on the official ballot. On the third Monday in June preceding the primary, the county committees meet at the county seats and determine by lot the order of names on the ballot. The chairman usually appoints a sub-committee of five, with himself as ex officio chairman, to meet on the fourth Monday in June to make up the primary ballot. The expense of the primary is borne by the candidates, and until the candidate has paid his pro rata share of the expenses as determined by the county executive committee, his name will not be placed upon the ballot.[20] On the day

[20] District candidates are assessed only $1.00 by each county executive com-

following the primary election, the county executive committee is called by its chairman to canvass the returns. The chairman certifies to the county clerk and announces the results of the election for county and precinct offices. He also certifies the results for district and State offices to the chairman of the State executive committee.[21]

The district executive committee is composed of the chairmen of the county executive committees of all counties of which the district is composed. The committee selects its own chairman. The district chairman receives individual announcements or petitions signed by twenty-five qualified voters for any district office on or before the first Monday in June, and it is his duty immediately to certify all such candidates for district offices to the county chairmen of his district.

The State executive committee is elected by the State convention in August of every even-numbered year. It consists of thirty-one members and a chairman; the chairman is elected at large, while one member of the committee is nominated by the delegates from each senatorial district and formally elected by the convention. The State committee meets on the second Monday in June, decides where the State convention will be held, which is also, by law, the place of the third meeting of the State executive committee, and finally passes upon the requests of candidates who are entitled to have their names printed on the official primary ballot and makes certification to the chairmen of the county executive committees. The State committee at this time also collects $100 from all candidates for state-wide offices, to help meet the primary election expenses. Not later than the second Saturday following the day of the first primary election the committee meets at the seat of government and receives and canvasses the returns from the general primary election for State and district offices and announces the results.[22] In any case where no majority has been received the State executive committee certifies the two highest candidates for each office to the chairmen of the county executive committees so that their names may be placed on the official ballot

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mittee in the district, so that the candidates for precinct and county offices bear the brunt of the expense.

[21] A law enacted by the Forty-third Legislature changes the method of making returns of elections, so as to make them available more quickly. Unofficial returns are provided for. *General Laws,* 43d Leg., reg. sess., 762-766 (1933).

[22] *Ibid.*

for the run-off primary. On the second Monday after the fourth Saturday in August, the State committee meets at the place already decided upon for the meeting of the State convention, and opens and canvasses the returns of the second primary election, which are then certified to the State convention. The chairman and the secretary of the convention must then certify these names to the Secretary of State in order to place the names on the general election ballot.[23] By October the Secretary of State must certify to the clerks of the various counties of the State, the nominations for district and State offices, respectively; and the county clerks, after publishing these names for ten days, shall have the names of the party nominees printed in the proper party column on the official ballot.

*Party Conventions.*—Not only is the party executive organization extensively regulated by statute, as the above sketch indicates, but the convention system is also required by law as an adjunct to the operation of the mandatory direct primary. The voters of each precinct, in convention or as prescribed by the county executive committee, on primary election day are required to select delegates to a county convention. Each precinct in the county is allowed one delegate for each twenty-five votes cast therein for the party's candidate for Governor at the last preceding election.[24] The county conventions meet on the first Saturday after the general primary election and select one delegate to the State convention "for each three hundred votes, or major fraction thereof, cast for the party's candidate for Governor in such county at the last preceding general election. . . ." A canvass for all State offices must be made by the State convention, which by law meets on the Tuesday after the third Monday after the fourth Saturday in August.[25] In addition to this, other functions of the State con-

[23] Original jurisdiction has been given to the Courts of Civil Appeals or the Supreme Court to issue a mandamus to compel party officials to perform a statutory duty when delay would be injurious. *General Laws of Texas,* 41st Leg., 4th and 5th called sessions, ch. 4 (1930); *Love v. Wilcox,* 28 S. W. (2d) 515 (1930); *Austin American,* September 8, 1932.

[24] Delegates to the county convention are frequently elected by the voters of a precinct in the direct primary election.

[25] Returns of the general election for Governor and Lieutenant-Governor are sent to the Secretary of State and are canvassed by a joint session of both houses of the Legislature. Returns for other State officers are canvassed by the Secretary of State in the presence of the Governor and Attorney-General, or either of them, on the fifteenth day following the election. *General Laws,* 43d Leg., reg. sess., 764 (1933).

vention are the adoption of the party platform, and the election of a new State executive committee.

The problem of selecting delegates to the national convention was temporarily solved in 1913 by the enactment of a presidential preferential primary law, but in 1916 this statute was declared unconstitutional by the State Supreme Court because it provided for the payment of the expenses of a party primary by the public. Owing to this fact, a set of conventions separate and distinct from those described above are called into operation every four years. Thus the party voters of each precinct meet on the first Saturday of May in presidential election years to elect and instruct delegates to a county convention, which in turn elects and instructs delegates on the first Tuesday after the first Saturday in May, to the State convention. On the fourth Tuesday in May these delegates assemble at the State convention for the purpose of selecting and instructing delegates to the national convention. The basis of representation in the precinct, county, and State conventions held under this article is not fixed by law. It is ordinarily based upon the number of votes of the party for presidential electors at the preceding general election, and the percentage apportioned through the State, county, and precinct conventions.

*Campaign Machinery and Funds.*—Candidates for State and district nominations may designate in writing to the Secretary of State the appointment of a campaign manager, while the same may be accomplished for local or county candidates by written notice to the county clerk of the candidate's county. Assistant managers may also be designated by candidates for either district or State nomination, or by their legally appointed campaign managers, by filing a written notice of appointment with the clerk of the county in which appointment is being made. Vacancies may be filled and removals made in the same manner as the offices were filled in the first instances. Moreover, after the campaign machinery as permitted by law has been organized, the candidate is responsible for the receipts and disbursements made by himself or his manager, and limitations, both as to purpose and amount, are set by law.

None but the candidate or his campaign manager may legally receive contributions to his campaign fund; contributions from corporations are prohibited. A citizen may raise "voluntarily" a sum not to exceed fifty dollars to defray the expenses of a political meeting, provided a sworn statement of all receipts and disbursements is filed with the county clerk of the county in which the

meeting is held within twenty-four hours. Any person may make bona fide contributions of his own personal services and of personal traveling expenses, "including hotel bills while traveling, to the support of any candidacy." Expenditure may also be made in the interest of a candidate "for postage or telegraph or telephone tolls, or for cost of any correspondence of any lawful purpose out of his own funds" of an amount not to exceed ten dollars.

Limitations are set by law as to the maximum amount which candidates and their campaign managers may spend in a campaign.[26] Four-fifths of the sums thus designated by statute may be used in the campaign preceding the first primary, and the other one-fifth for the campaign preceding the run-off election, with, however, a legal maximum of expenditure in a single county. In the interest of a candidacy one may expend an amount equal to ten dollars per hundred voters in any one county, with the added proviso that the total shall not exceed the legal maximum.

Except as noted above, only a candidate or his campaign manager or a legally appointed agent may expend money in the interest of the campaign. Furthermore, the candidate and his campaign manager must keep a careful record of all receipts and expenditures, and the latter must fall within the purposes specified by statute.[27] Sworn statements as to the receipts and expenditures of the campaign must be made not more than thirty nor less than twenty-five days before the primary election, and again not more than ten nor less than eight days prior to the primary, and a third not more than ten days after such election.

Any violation of the law relating to campaign contributions and expenditures carries severe penalties in the penal code, consisting of a fine of $1,000 or a year in jail, or both, or confinement from one to five years in the State penitentiary. Moreover, any candidate who knowingly violates these provisions forfeits his right to have his name go on the ballot, in either the primary or the general election. Proceedings by quo warranto may be instituted in the district court of any county to determine whether or not a candidate has so violated this statute.[28]

[26] $10,000 for Governor and United States Senator; $2,500 for Congressmen, officers elected by voters of entire State, and Judges of the Courts of Last Resort; $1,000 for State Senators; $300 for State Representatives.

[27] Traveling expenses, fees, stenographic and clerical work, telegraph, telephone, printing, advertising, expenses for public meetings.

[28] Quo warranto proceedings must be brought by the county or district attorney or by the Attorney-General. See *Staples v. State,* 244 S. W. 639

*Primary Election Contests.*—In spite of the fact that procedure for contested nominations has been outlined in the statutes, it has been necessary for the courts in numerous instances to interpret the law involving the procedure in such contests.[29] In case of a contested election, proceedings must be instituted within five days after the lists of nominees are published by the county clerks, or the nominations as previously certified are considered valid, and are not subject to question. If a nomination is contested, the case may be taken either to the appropriate executive committee of the party or to a district court. If the former method is followed, proceedings must be instituted within five days after the results of the primary are declared by the committee or convention, but if the contest is begun in the district court, ten days (after the certificate of nomination is issued by the proper authority) are allowed for filing the necessary papers. However, appeal from a committee's decision may be taken by either party to the district court. In case of a contest over a nomination to a State office, unless otherwise agreed upon by the parties to the suit, it must be heard either originally or upon appeal by the district court at Austin, but in other contests the district court of the county of the contestee's residence may take jurisdiction, or it may be heard by the district court of the county in which the alleged fraud or irregularity occurred. Both the courts and the proper party committees have access to the election returns, if it is necessary to examine such returns in deciding a contest. Except in contests involving a nomination for a State office, the decision of the district court is final, but in the case of contest of a State office, appeal may be made to the Court of Civil Appeals.[30]

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(1922); *State v. Meharg,* 287 S. W. 670 (1926); *Yett v. Cook,* 281 S. W. 837 (1926). For a summary of the *Peddy v. Mayfield* controversy of 1922 see *The Southwestern Political Science Quarterly,* III, 225-231 (1922).

[29] See *Hammond v. Ashe,* 131 S. W. 539 (1910); *Land v. McLemore,* 169 S. W. 1073 (1914); *Pollard v. Speer,* 207 S. W. 620 (1918); *Kinnard v. Lee,* 244 S. W. 1046 (1922); *Gettys v. Cobble,* 244 S. W. 860 (1922); *Bickley v. Lands,* 228 S. W. 514 (1926); *Seale v. McCallum,* 287 S. W. 45 (1927); *Hamilton v. Monroe,* 287 S. W. 304 (1927); *Elliot v. Williams,* 9 S. W. (2d) 483 (1928); *Couch v. Hill,* 10 S. W. (2d) 170 (1928); *Thomason v. Seale,* 53 S. W. (2d) 764 (1932).

[30] For interpretations of the statutes on primary election contests see *Sterling v. Ferguson,* 53 S. W. (2d) 753 (1932); *Ferguson v. McCallum,* 53 S. W. (2d) 768 (1932).

### APPRAISAL OF THE PRIMARY SYSTEM

Any detailed and careful study of the primary election laws brings to light certain glaring defects.[31] They have been the result of a gradual process of formation with very little thought being given to the preparation of any comprehensive code. From the fact that there has generally been a strong minority in the Legislature who have favored a loose regulation, particularly of the nominating procedure of political parties, a conglomerate mass of statutes has resulted. Being so loosely connected, the form and texture of the law is very poor; many omissions, ambiguous wording, and an overlapping of different sections result either in direct conflicts or in a lack of clearness. This has been most perplexing and confusing to both the voter and the candidate.

Moreover, the code should be extended in certain regards. For example, since it is the duty of the judiciary to interpret and apply the law impartially, non-partisan ballots should be provided for judicial officers. The same would apply also to educational administrators, who are supposed to be technical experts.

Furthermore, there are certain places where the present provisions are greatly in need of strengthening. Nomination by petition signed by a substantial percentage of party voters would help to keep "joker" candidates from the ticket. Moreover, where only one party candidate files for the nomination to an office, the chairman of the party committee in charge should certify him as the party nominee without the further necessity of printing the names of such single candidates upon the ballot. The practice of allowing the writing in of names for precinct chairman gives the "machine" an opportunity to control these offices more easily. It has been suggested that nomination by convention would be a better plan for such party offices.[32] The printing of the names on the ballot according to lot is a very poor and unfair method in contrast with the principle of rotation. Owing to sectional prejudice within the State, the printing of the addresses of the candidates makes for prejudiced voting, and adds to the cost of the ballot as well.

The law is also inadequate in defining and preventing fraud and corrupt practices. Because expenditures are limited to lump-sum maximums, padding is often resorted to, owing to the fact that

[31] O. D. Weeks, "The Texas Direct Primary System," *Southwestern Social Science Quarterly,* XIII, 95-120 (1932).
[32] *Dallas Morning News,* October 23, 1922.

the maximum is usually reached in the first primary. A better plan would be to set a maximum for each campaign. The regulations of contributions are very vague and ineffective in that small amounts are allowed without reporting, which also makes for padding of reports. Observance of regulations which are absolute in fact should be required of candidates and agents in all expenditures, whether large or small.

Again, the operation of the double primary system often results in minority choices, particularly in regard to the gubernatorial office and United States Senatorships. Other serious defects of the double primary system are the added expense of the second election, and the demands on the physical strength of the candidates in the making of two and sometimes three races. Preferential voting would remedy these two defects, inasmuch as it would eliminate the run-off primary while tending to insure the nomination of a "majority" candidate. Further, in the conduct of elections, and in the making and in the canvassing of returns, much improvement could be effected. All election material should be returned to the county canvassers immediately after elections. Moreover, contending groups should be assured of an impartial canvass.

The problem of securing a proper balance between the too rigidly closed primary and the open one, which is destructive of party responsibility, is a serious matter. The party pledge has generally proven to be unfair or inadequate as a means of political control, for it either violates the secrecy of the ballot or becomes a mere formality which can be disregarded as the voter sees fit. Bolting in a one-party state is perhaps an essential means of control for the voter, although it is usually of negative value. Since 1928, sporadic attempts to punish bolters and to purge the party of them have been of very little avail, owing to the fact that the courts have tended to curtail the party in exerting too much power over its members.[33]

Finally, without exhausting the list, the courts of the State should be relieved of the responsibility of making decisions in election controversies. It would seem that the need is for a new law; mere codification of existing statutes will not suffice. The best features of the present system should, of course, be retained, but the law should be extended so as to meet more adequately the demands of present conditions in the State.

[33] S. D. Myres, Jr., *Party Bolting* (Arnold Foundation Studies in Public Affairs, 1932).

### LEGAL STATUS OF POLITICAL PARTIES

The status of political parties is clearly defined by the State Supreme Court in *Waples v. Marrast.*[34] "A political party is nothing more or less than a body of men associated for the purpose of furnishing and maintaining the prevalence of certain political principles or beliefs in the public policies of government. . . . They perform no governmental function. They constitute no governmental agency. The purpose of their primary elections is merely to enable them to furnish their nominees as candidates for the popular suffrage. In the interest of fair methods and a fair expression of their members of their preference in the selection of nominees, the State may regulate such elections by proper laws, as it has been done in our general primary law. . . ." But the court frankly states that " to provide nominees of political parties for the people to vote upon in the general election, is not the business of the State." This was perhaps the earliest decision setting forth the relation of the political party to the State. Since that time, however, there have been numerous other decisions, based upon the ruling in this leading case, indicating that this is the current theory as to the nature of political parties in Texas.[35]

### REFERENCES

For a general discussion of political parties in state government, consult C. P. Patterson, *American Government,* rev. ed., Ch. XXXII (1933) and other standard texts on American government and state government. See also Judd and Hall, *The Texas Constitution,* Ch. X. There is no comprehensive account of the history and operation of political parties in the State. Mr. Winkler has collected the party platforms up to 1916. Professors Weeks and Martin have published scholarly studies of different phases of party regulation and development. The *Texas Weekly* (1930-1933) contains interesting comments on party contests and analyses of election results. Primary and general election statistics are given in the annual editions of the *Texas Almanac.* S. H. Acheson, *Joe Bailey, the Last Democrat* (Macmillan) is a noteworthy contribution to political biography.

[34] 184 S. W. 180 (1916).

[35] *Waples v. Gilmore,* 188 S. W. 1037 (1916); *Morris v. Mims,* 224 S. W. 587 (1920); *Koy v. Schneider,* 221 S. W. 880 (1920); *Westerman v. Mims,* 227 S. W. 178 (1921); *Cunningham v. McDermett,* 277 S. W. 218 (1925); *Scurry v. Nicholson,* 9 S. W. (2d) 747 (1928); *Love v. Wilcox,* 28 S. W. (2d) 515 (1930); an excellent summary of this matter is also to be found in the dissenting opinion in *Nixon v. Condon,* 52 S. Ct. 485 (1932).

# CHAPTER X

## LOCAL GOVERNMENT

A persistent spirit of localism has given a position of peculiar importance and responsibility to local government in the United States. This statement applies with undiminished vigor to Texas, where the feeling of community independence and self-sufficiency has obstinately resisted State intervention or supervision in local affairs. Fear and jealousy of external authority have been difficult to overcome. The legal fiction is maintained that, in governmental capacities, cities and counties are merely arms of the State. With the enforcement of State laws in the hands of officials politically responsible to local opinion, this doctrine of the law fails to harmonize with realities. Thus, at any rate in a negative fashion, there exists practical local autonomy which should serve as a foundation for community solidarity and civic accomplishment. The salutary results which might be expected under such circumstances, however, do not always materialize.

The advantageous position of local agencies for the performance of many functions causes them to be entrusted with the greater portion of the taxpayer's dollar. Most public works and social welfare projects are financed by counties, cities, or special districts. The citizen comes into contact with his city or county officials almost daily. These facts should make the subject of local government one of universal interest. The problem of local government may be analyzed from the standpoint of powers, organization, and relation of local government to State government.[1] A comprehensive study would also consider the problem of personnel.

### COUNTY GOVERNMENT

*Powers, Liabilities, and Functions.*—"Counties are involuntary political divisions of the State, created by general laws to aid

[1] H. G. James, "Problems of Local Government," *Addresses at the Conference on Citizenship, Education, and Home Welfare,* University of Texas Bulletin, No. 2211, 23 (1922).

in the administration of government. . . . They are purely auxiliaries of the State; and to the general statutes of the State they owe their creation, and the statutes confer upon them all the powers they possess, prescribe all the duties they owe, and impose all liabilities to which they are subject." [2]

Counties are ordinarily designated as *quasi* corporations.[3] While they "are municipal corporations in a restricted sense, they are involuntarily so, and sustain to the state a relationship which a town or city incorporated does not sustain. They are created to carry out a policy common to the whole state, and not mainly to advance the interest of the particular locality. . . ." [4]

Subject to constitutional restrictions which have become more numerous with each succeeding Constitution, the Legislature has the power to create counties, including the authority to grant powers to the county and to impose liabilities upon it. "Counties, being component parts of the state, have no powers or duties except those clearly set forth and defined in the Constitution and statutes." [5] Such powers and duties are strictly interpreted. To establish claims against the county for damages arising from the exercise of its functions, it must be shown that liability has been imposed by statute, either expressed or implied.[6] Counties may be exempted by statute from liability in the performance of obviously private functions.[7] As a rule, however, no liability attaches to negligence in the performance of county functions.

Efforts to classify county functions as purely local or as of State importance accomplish little.[8] The services of the county may be more logically arranged with reference to its various primary functions. Briefly, they are as follows: (1) The county serves as an election district for local, district, and State officials. County officers perform duties connected with the electoral process such as fixing the limits of voting precincts, collecting poll taxes, and setting up the mechanism for operation on election day. (2) For

[2] *Cummings v. Kendall County,* 7 Tex. Civ. A. 167 (1894), quoting Dillon, vol. 1, sec. 25.

[3] *City of Sherman v. Shobe,* 94 Tex. 129 (1900).

[4] *City of Galveston v. Posnainsky,* 62 Tex. 127 (1884).

[5] *Edwards County v. Jennings,* 33 S. W. 585 (1895).

[6] *Heigel v. Wichita County,* 84 Tex. 392 (1892); *Florida v. Galveston County,* 55 S. W. 540 (1900); *Crause v. Harris County,* 44 S. W. 616 (1898).

[7] In a recent act empowering cities and counties of a certain class to establish air ports, liability for personal injuries was specifically disclaimed, regardless of the unsafe condition of such air port, or of negligence, or lack of skill in its management.

[8] W. F. Dodd, *State Government,* 2d ed., 401 (1928).

judicial purposes, the county is the basic unit of the State. It is a part of or composes one or more civil judicial districts. The county court exercises jurisdiction over certain misdemeanors, comparatively minor civil causes, and probate matters. Within the county there are the justices of the peace. (3) In the maintenance of public order, the sheriff, his deputies, and the constables are the chief county functionaries. (4) The county is an area for the administration of financial matters of both local and State concern. The tax assessor, tax collector, and treasurer are fiscal officers for both county and State. (5) The county is a unit for the surveying of land and the recording of land deeds and like instruments. (6) Health matters are attended to by the county health officer. (7) Educational services are rendered by the county through schools and libraries. (8) Public welfare functions such as the establishment of poorhouses, granting of widows' pensions, and the creation and maintenance of parks are performed by the county. (9) Public works and buildings including bridges, highways, courthouses, and jails are constructed to a large extent by the county and its smaller subdivisions.

*Governmental Organization of the County.*—The general governing body of the county is the commissioners' court, composed of the county judge as presiding officer and four commissioners elected by the qualified voters from the four precincts into which the county is divided.[9] Commissioners must reside in the precinct which they represent, furnish a $3,000 bond, and take the oath of office. Vacancies are filled by the county judge, while removal from office may be effected by the district court for incompetency, official misconduct, or habitual drunkenness.[10] The regular term of the court lasts for one week or less beginning the second Monday of each month, and special sessions may be called by the county judge or three of the commissioners.[11] The county clerk is ex officio secretary and keeps the minutes of the commissioners' court. The salary of the commissioners varies from $720 to $3,800 per annum, according to the assessed valuation of the property of the county.[12]

Appointment of numerous minor officials is one of the duties of

[9] As to qualifications for voters, see Ch. IX.

[10] County judges, county attorneys, clerks of the district and county courts, justices of the peace, constables, and other county officers may be similarly removed.

[11] The term "commissioners' court" is really a misnomer, for its functions are almost entirely administrative and legislative.

[12] *Laws,* 43d Leg., reg. sess., 727-730 (1933).

the commissioners' court. Among these officials are commissioners of appraisement of improvement districts, veterinarian, health officer, drainage engineer, county librarian, juries of view to lay out county roads, county road superintendent, road patrolmen, road overseers, inspectors of sheep, and tax assessors and collectors for certain special districts. Vacancies in the office of county judge, county attorney, clerk of the county court, sheriff, county treasurer, county hide inspector, assessor, collector of taxes, justices of the peace, constables, and county superintendent of public instruction are filled by a majority vote of the court.

Contracts are made for the county by the commissioners' court with certain procedural limitations. Notice and competitive bids are required for expenditures of over $2,000. Contracts involving from $500 to $2,000 must be let through competitive bidding at a regular term of the court.

Functions relating to public works and public buildings are performed by the commissioners' court. Public roads are opened and discontinued by the court, and each commissioner is supervisor of roads in his precinct. Four road commissioners may be appointed by the court to have actual control of road construction and maintenance, or each county commissioner may act as road commissioner for his precinct. As an alternative, each county may have one or more road superintendents to have direct supervision over its roads and highways. The commissioners' court coöperates with the State Highway Department in the construction of designated State highways. Bridges are built and kept in repair under the supervision of the court, and it may regulate or actually operate ferries. Drains may be constructed by the court, and it also has the power of creating drainage districts. Commissioners' courts of coastal counties may provide for sea walls and breakwaters, while certain counties may furnish air ports. Courthouses, jails, and other county buildings are erected and kept in repair by the commissioners' court.

Public welfare functions are administered by the court. It appoints the county health officer and may establish a county hospital and appoint its board of managers. Contracts may be made with private hospitals for the care of the sick of counties with no city of more than 10,000 population. A coöperative city-county hospital may be provided for in counties having within their boundaries cities of more than 10,000 population. Mothers' pensions may be granted by the court, and the care of paupers and sick indigents is

under its control. Nurses may be employed to promote the public health by examining school children, etc. Boards of health for unincorporated villages and towns in the county are appointed by the court.

Free county libraries may be established and maintained by the commissioners' court. Two or more counties may establish joint libraries or a county may avail itself of the services of an existing library. Incorporated cities may arrange for the use of the free county library by its citizens. On petition of 100 qualified voters, an election must be called on the question of establishing a farmers' county library to furnish information on agricultural topics.

County parks to the number of four with an area of not more than 100 acres each may be set up by the commissioners' court. It may make improvements and regulate concessions in the parks. A levy of 5 cents on the $100 valuation may be made for park purposes.

The commissioners' court has numerous duties in connection with elections. It prescribes the boundaries of election precincts, selects election judges, pays election expenses, and canvasses the returns. It calls elections on questions regarding the creation of all kinds of special districts, special tax levies, and bond issues.

Financial duties connected with the raising of revenues, the borrowing of money, and the control and disbursement of funds constitute probably the most important phase of the work of the county commissioners' court. A general property tax of not over 95 cents on the $100 valuation may be levied by the court. This is applied as follows: not to exceed 25 cents for general county purposes, 15 cents for the jury fund, 15 cents for roads and bridges, 25 cents for public buildings, streets, sewers, waterworks, and other permanent improvements. With the approval of a majority vote of the property taxpayers an extra 15 cents may be levied for road purposes. The Legislature has authorized an additional 5 cents for park purposes, the constitutionality of which is doubtful. Coast counties may make further levies for sea walls or breakwaters with the consent of the voters. A twenty-five-cent poll tax and occupation taxes not exceeding one-half of the State occupation taxes may be levied. To levy a county tax the court must be in regular session with all members in attendance.

Bonds for sums less than $2,000 for repairing buildings or funding valid and outstanding obligations may be issued without an election, but an election must be held before the court may

issue bonds for the erection of a courthouse and jail, for the construction of bridges, hospitals, homes for delinquent juveniles, or roads. After proper electoral procedure the various types of minor subdivisions of the county, such as water improvement or road districts, are authorized by the court to issue bonds.

The commissioners' court is a sort of clearing house for county finances. Its secretary, the county clerk, keeps a record for it of the financial condition of the county. The court receives a quarterly report from all officials handling county funds. For example, the tax collector, the treasurer, and officers collecting fines must make reports to the court concerning their collection and disposition of county funds. It acts as a board of equalization and approves the rolls prepared by the tax collector. Later it corrects errors in tax administration, such as double renditions.

The chief individual in the organization of the government of the county is the county judge, who is elected biennially. He is required "to be well-informed in the law of the State," but very infrequently is. There is a fusion of State and local functions in the office of the county judge. In his capacity as judge of the county court, he is very clearly performing a State function, while his multifarious administrative duties are both State and local in nature. As a member of the commissioners' court, he aids in the accomplishment of the duties of that body. Considerable routine connected with elections is cared for by the judge, such as posting the proclamation of the Governor calling general elections, ordering county and precinct elections, providing election supplies aided by the sheriff and county clerk, receiving returns, and issuing certificates of election to successful candidates. He makes returns of the elections for district, State, and federal officers to the Secretary of State. He calls elections for the incorporation of towns and villages, the abolition of municipal corporations, the incorporation of school districts, the levy of school district taxes, the issuance of schoolhouse bonds, and stock-law elections.

A multitude of petty offices are filled by appointment by the county judge, such as commissioners to assess damages for a railroad right-of-way, committees of pilotage in very minor ports, matrons for courthouse rest rooms, probation officers, and road overseers in special instances.

The county judge signs bonds issued by counties and some of the minor districts. He handles the sale of bonds for certain of these districts, and has notarial powers. He also may perform mar-

riage ceremonies. In counties having less than 3,000 scholastic population the county judge is ex officio superintendent of public instruction unless the county has adopted by majority vote the proposition to employ a full-time superintendent.[13]

The county attorney is almost wholly a judicial officer of the State, but his election by the voters of the county causes his zeal in the performance of his State functions to be greatly tempered by local opinion. He must be a duly licensed attorney and furnish a bond in the sum of $2,500 payable to the Governor, conditioned that he will pay over all public moneys which may come into his hands.

The county attorney represents the county in its civil suits, most of which are suits instituted for the collection of delinquent taxes. It is his duty upon the request of county or precinct officers to advise them regarding their official duties. He is charged with the duty of bringing suits against county or district officers entrusted with public funds to compel the performance of the legal duties of such officers and to preserve and protect the public interests. He must make an annual report to the county treasurer of the money received by him through his office during the year. With the consent of the commissioners' court he may appoint not over three assistants.

The sheriff is conservator of the peace, administrative official, and executive officer of the courts within the county. He is elected biennially and must furnish bonds in sums varying from $5,000 to $30,000. His deputies are appointed with the consent of the commissioners' court. His most common duties are as conservator of the peace in preventing crimes, breaking up mobs, and arresting offenders. As executive officer of the various courts of his county, he keeps order in the court room and serves subpœnas, citations, and other processes. His administrative duties are relatively unimportant except in counties of less than 10,000 inhabitants, where he is ex officio tax collector. In all counties he delivers writs of election and election supplies, and serves with the county judge and clerk as a board to provide election supplies. He has control of the courthouse and jail of his county. The sheriff is paid fees for serving processes and usually an ex officio salary by the commissioners' court.

[13] The county judges and commissioners have formed an organization styled "The County Judges' and Commissioners' Association of Texas," which meets in annual convention to discuss county problems, and publishes an organ, *County Progress*.

The clerk of the county court, commonly known as the county clerk, combines in his office functions of both a judicial and non-judicial nature. He attends the sessions of the county court, keeps its records, and files and indexes papers concerning pending cases. He is ex officio clerk of the commissioners' court, and keeps its minutes, and has possession of its records, books, and papers. He keeps a finance ledger which contains an account with every officer receiving county funds. A statement of the condition of these accounts is made to the commissioners' court quarterly, and a county financial statement is prepared and published annually.

Divers ministerial functions are performed by the county clerk. He is the recorder of instruments of writing, such as deeds, mortgages, bonds for title, and contracts. He must see to the proper indexing of these records and is their custodian. While these are largely routine matters, their accurate and skillful performance is of prime importance. He issues marriage and hunting licenses. His compensation is derived from fees and an ex officio salary from the county treasury.

In each county a tax assessor is elected biennially. He must give bond, take the required oath, and may appoint one or more deputies with the consent of the commissioners' court. No especial qualifications are required to become assessor, although he must perform the technical function of evaluating the property of the county, with the result that the work of this office is generally unscientifically done.

Assessments are made between January 1 and April 30 of each year. From the second Monday in May to the first day of June, the commissioners' court sits as a board of equalization, citing taxpayers to appear and show cause why their assessments should not be raised (or lowered, in exceedingly rare instances). When this work is completed, the tax rolls are prepared and delivered to the tax collector after approval by the commissioners' court.

The county tax assessor also makes the assessments for some of the numerous districts within the county. Cities may employ the county assessor to make the municipal assessments. The compensation of the assessor is based upon the valuation of properties assessed, the number of poll taxes assessed, with a certain percentage of excess fees and additional sums for assessing taxes for cities and special districts.

A county tax collector is elected biennially in counties having over 10,000 inhabitants. He takes the customary oath, must fur-

nish bond, and may appoint deputies. He receives taxes shown to be due by the assessment roll furnished by the assessor, and makes a monthly report to the comptroller. This report must be approved by the county clerk, but such approval is usually granted perfunctorily. Quarterly reports are made by the collector to the commissioners' court. The tax collector ordinarily receives taxes for the special districts within the county. It is the duty of the collector to furnish lists of poll taxes and exemption certificates to election authorities. Compensation is on the basis of commissions on the amount collected, plus a percentage of the excess.

Effective January 1, 1935, in all counties of 10,000 or more inhabitants, the offices of tax assessor and tax collector will be consolidated into one office of "Assessor and Collector of Taxes," to be elected for a two-year term. In other counties the sheriff will serve ex officio as assessor and collector of taxes. This change was effected by a constitutional amendment adopted at the general election in November, 1932, and by enabling legislation passed by the Forty-third Legislature.[14]

The county treasurer is elected biennially by the qualified voters of the county, and is more truly a county officer than the assessor and collector in that he performs no functions for the State. He receives funds belonging to the county and disburses them under the direction of the commissioners' court. He must make a minute report to every regular term of the commissioners' court, and is charged with the duty of examining the accounts and records of the clerks, sheriff, justices of the peace, constables, and tax collector to find out if they have paid over all county funds. He also makes reports to the county clerk. Funds are deposited in the county depository and paid out by the treasurer on proper order. At a recent session of the Texas Association of County Judges and Commissioners it was suggested that the office of county treasurer be abolished and that the duties of the office devolve upon the county depository and auditor.[15]

The district court, in counties of over 35,000 population having assessed values of $15,000,000 or more, or where the commissioners' court wishes, appoints a county auditor for a term of two years. He must be a competent accountant and furnish bond in the sum of $5,000. He has oversight of the books and records of the officers of the county receiving funds. He checks these books quar-

[14] *General Laws,* 43d Leg., reg. sess., XIX-XX, 598-600 (1933).
[15] *Houston Post-Dispatch,* October 4, 1929.

terly at least, and reports periodically to the commissioners' court. He must advertise for bids on county supplies, and prepare an estimate of revenues and expenses for the court in the preparation of the budget. In counties having an auditor, the county clerk is relieved of his financial duties.

The county is an important unit for public school administration, and the agencies for the performance of this task are the board of five county school trustees and the county superintendent of public instruction. The trustees are elected, one at large and one from each commissioners' precinct, to serve for two years, although their terms are not coördinate. The county board establishes high schools, prescribes courses of study, divides the county into districts and changes district lines, and is vested with title to school properties within the county. The board hears appeals from the decisions of the county superintendent. It meets quarterly and its members receive a small "per diem" for their work.

The county superintendent, who is secretary and executive officer of the board, is elected at a general election for a four-year term in counties having 3,000 scholastic population. He must be the holder of a teachers' first-grade or permanent certificate. In counties with a scholastic population of less than 3,000 the county judge acts as county superintendent ex officio unless the office of county superintendent has been created for such county at an election called upon petition of twenty-five per cent of the qualified voters of the county. In counties having a population of 350,000 or more the county superintendent is appointed by the county board of education and holds office for two years.

The county superintendent performs certain functions independently of the board of trustees. He has immediate supervision of public education in his county under the direction of the State Superintendent. He visits and examines public schools, and holds an annual institute. He approves vouchers drawn against the school fund, and distributes free textbooks to the schools of the county. He also examines applicants for teachers' certificates and keeps a record of certificates held by those teaching in his jurisdiction.

In counties having a population of 100,000 or over, the "county unit system" may be adopted. Under this plan there are seven county school trustees, three elected at large and one from each precinct, with overlapping four-year terms. This board determines the educational policy of the county, consolidates schools, and pre-

scribes courses of study. All schools in the county open on the same date, and the board may levy a school tax of $1.00 after popular authorization. Under this system the county board appoints the county superintendent. After a trial of two years the unit plan may be abandoned.

Counties have a number of minor officials such as the county surveyor, elected for a two-year term; the county health officer, appointed for like tenure by the commissioners' court; the inspector of hides and animals, elected in about one-third of the counties for a two-year term; justices of the peace, elected from each justice's precinct; and notaries public, appointed by the Governor with the consent of the Senate.

*Subdivisions of the County.*—There are three classes of governmental units within the county. The first consists of purely administrative districts and includes the commissioners' precincts, road precincts, health districts, justices' precincts, and election precincts. The second class consists of the subdivisions with corporate powers other than cities and towns, such as school districts, road districts, drainage districts, navigation districts, water preservation and control districts, water improvement districts, fresh water supply districts, and levee and overflow or improvement districts. The third class of subdivisions within the county includes incorporated cities, towns, and villages. They are in no way subordinate to the county, but their presence raises vexing problems as to the relations between the two governing agencies.

*Personnel.*—The problem of personnel has been given very little attention in Texas counties. The greater part of the personnel of county government is elected, although in the larger counties a large number of deputies and clerks are employed. Usually these subordinates are appointed under the "spoils" principle, although there are doubtless a considerable number of appointing officials who follow the merit principle. A civil service law for Tarrant County, enacted by the Forty-first Legislature, was in operation for a brief period before it was declared unconstitutional by a local court.[16]

*Compensation of Local Officials.*—The Constitution of 1876 provides that many local officials shall be paid by fees to be prescribed by the Legislature. General statutes governing the compensation of local officials have become the exception rather than the rule, owing to the passage of numerous laws with special ap-

[16] *Laws,* 41st Leg., reg. sess., 194-196 (1929).

plication.[17] The existence of over 500 fee laws has made generalizations regarding the compensation of local officials practically impossible.

Complaints regarding abuses of the fee system have increased in recent years. On three separate occasions an amendment to the Constitution has been submitted to the people for the abolition of the fee system, but in each instance it has been defeated. As a result of investigations made by committees of the Forty-first and Forty-second Legislatures, statutes have been passed prescribing the maximum amounts of annual fees that may be retained by local officers in counties of defined population.[18]

A constitutional amendment proposed by the Forty-third Legislature will be submitted to the voters at the general election in November, 1934. It abolishes the fee method of compensating all district officers and all county officers in counties having a population of 20,000 or more. It permits the commissioners' court in counties with a population of less than 20,000 to decide whether county officers shall be paid on a fee or a salary basis. In all counties the commissioners' court is to decide the method of compensation of precinct officers.[19]

*Relations between State and County.*—State control over local units may be legislative, judicial, or administrative. The Legislature, being the repository of residual power, has complete control over counties except as prohibited by the Constitution. The tendency has been as new Constitutions were drafted to restrict further the Legislature in legislation affecting counties, until the county is now thoroughly embedded in the Constitution—secure from both legislative dabbling and constructive reform. These limitations concern such things as the creation, area, organization, powers, taxing limitations, and bonded indebtedness of counties.

Judicial control is secured principally through the jurisdiction of the courts to pass upon the legality of acts of county officers. All county officials are removable by the district court for incompetency, official misconduct, or habitual drunkenness.

Administrative control of the county by the State is most highly

[17] See "Index of Constitutional and Statutory Provisions Relating to Compensation of County, District and State Officials and Employees," *Second Biennial Report of the State Auditor and Efficiency Expert,* v. 8 (1932).

[18] See *Final Report and Recommendations of the Senate Investigating Committee,* 42d Legislature (1933), and *General Laws,* 41st Leg., 2d called sess., 222-224 (1929); *ibid.,* 41st Leg., 4th called sess., 30-39 (1930); *ibid.,* 42d Leg., reg. sess., 822-824 (1931); *ibid.,* 43d Leg., reg. sess., 734-745 (1933).

[19] *General Laws,* 43d Leg., reg. sess., 1004-1006 (1933).

developed in educational affairs. In financial affairs the county is subjected to a lesser degree of State control, the tax collector having to make monthly reports to the Comptroller. The county health officer is under the supervision of the State Board of Health in certain respects. Central control in highway affairs is secured through the power of the State Highway Department to designate and construct State highways.

*Defects in County Government.*—Professor James has suggested the following points as some of the chief defects in Texas county government: (1) excessive rigidity and uniformity resulting from the minute provisions of the Constitution regarding counties; (2) the multiplicity of elective offices; (3) the fee system of paying public officers; (4) the lack of a system of county police; (5) the profusion of subordinate areas provided by law; (6) the unsatisfactory relationship existing between the county and the incorporated communities within it.[20]

*Reform of County Government.*—Until the last few years little constructive thought was devoted to the problem of the reform of county government. The abuses of the fee system and the increasing cost of local government stimulated an awakening of interest in the problem. The passage, in 1931, of the uniform budget law and the law requiring reports on local taxes and indebtedness has been noted.[21] A proposed constitutional amendment providing that counties of 60,000 population or more should have the power to draw up home rule charters, and that city and county governments should be permitted to consolidate, passed the House at the session of 1931, but failed in the Senate by a single vote.[22] Mention has been made of the fee investigations and the resulting legislation, and of the proposed constitutional amendment to abolish the fee system. The adoption of the amendment consolidating the offices of tax assessor and tax collector has also been noted. Purchasing agents were provided for some of the larger counties, and the county judge of each county with a population between 300,000 and 355,000 was made the budget officer of the county by legislation enacted in 1933.[23]

The Forty-third Legislature, 1933, witnessed the introduction

[20] The foregoing description of Texas county government is based principally upon *County Government in Texas* by H. G. James, revised by Irvin Stewart, and published as University of Texas Bulletin, No. 2525 (1925).

[21] See Ch. VI.

[22] *American Political Science Review,* XXV, 1013-1015 (1931).

[23] *General Laws,* 43d Leg., reg. sess., 11, 107, 110 (1933).

of a number of constitutional amendments for the reorganization of county government, and two succeeded in passing both houses for submission to a popular vote. One proposed amendment, adding sec. 2-A to Article IX, which will be on the ballot at the general election in November, 1934, would vest general management and control of the affairs of the county in the commissioners' court, subject to the authority of the Legislature and of all general laws not in conflict with the provisions of the proposed amendment. The offices of district clerk and county clerk would be combined into that of a record clerk, and the duties of tax assessor and tax collector would be combined in those of a tax clerk; the new officers would be elected for a term of two years. Authority is given to the commissioners' court to combine the offices of county treasurer and county surveyor, and to fix the compensation of all county and precinct officers, with certain exceptions. Contracts may be made between the commissioners' court of the county and the governing boards of cities, towns, and districts within the county, for the performance of certain services by the county for such cities, towns, or districts, or vice versa. Such contracts must be approved by the Attorney-General and are limited to a two-year period. The Legislature may provide by general law for "complete forms of county government and organization different from that provided for in this Constitution to become effective in any county when submitted in such manner as may be prescribed by the Legislature to the qualified voters of such county in an election held for such purpose and approved by a majority of the qualified voters voting in said election." [24]

*County Home Rule.*—A second proposed amendment, approved by the electors on August 26, 1933, provides for the adoption of home rule charters by counties. Only an outline of its lengthy provisions can be given here.[25] Any county with a population of 62,000 or more may, by a favoring vote of the resident qualified electors of the county, adopt a county home rule charter, and the Legislature, by an affirmative vote of two-thirds of the total membership of both houses, may authorize the adoption of home rule charters by counties with less than 62,000 population. In charter elections the votes cast by electors in cities and towns are to be kept separately, but counted collectively, and the votes

[24] *General Laws,* 43d Leg., reg. sess., 992–994 (1933).

[25] For the complete text of the amendment, see Art. IX, sec. 3 of the Constitution, as printed in the Appendix.

of electors of the county, not resident within the limits of any city or town, are to be kept separately and counted separately, and the charter shall not be adopted unless it is favored by both a majority of the urban vote and a majority of the rural vote. No charter may "inconsonantly" affect the operation of the general laws of the State relating to the judicial, tax, fiscal, educational, police, highway, and health systems, or be inconsistent with the sovereignty and established public policies of the State, or operate to impair the exemption of homesteads as established by the Constitution and laws.

Complete freedom is allowed the county in choosing its form of government. It may continue the commissioners' court, as now constituted or in a modified form. On the other hand, it may provide for any other form of government, the only limitation being that the governing body must be elective and the term must not exceed six years. If it wishes, a county may adopt the manager plan.

With the consent of the people expressed at the ballot box, in accordance with a method prescribed in the amendment, a county may assume some or all of the governmental and proprietary functions of any city, town, district, or other political subdivision within its boundaries. The county may contract, for not more than two years, with the principal city of the county to perform one or more of its functions.

Other sections of the amendment deal with the method of compensation of officials, consolidation of officers, assessment and collection of taxes, borrowing, and with "areas urban in character." [26] An enabling act providing for the necessary machinery for putting the amendment into operation was passed in anticipation of its adoption.[27] The amendment is the most significant change yet adopted for the reorganization of county government in Texas.

## MUNICIPAL GOVERNMENT

*Source and Extent of Municipal Powers.*—Until the rise of the home rule movement, the unquestioned rule of American jurisprudence was that municipal corporations derived their existence and powers from the Legislature and that their life was at the mercy of legislative caprice. Legislatures assumed the power to grant charters of incorporation by special act, but the cities finally

[26] See articles by Alonzo Wasson in *Dallas Morning News,* August 7, 8, 9, 10, 1933.

[27] *General Laws,* 43d Leg., reg. sess., 784-798 (1933).

conquered what they called the "rural legislative tyrant" by securing the adoption of general laws under which incorporation might be had. The emptiness of their victory became apparent with the continuation of special legislation. Prohibitions upon special legislation were ineffective, and the latest step in the efforts of cities to gain local autonomy and immunity from legislative interposition in local affairs is constitutional home rule. Texas cities operate under all these forms; i.e., special charter, general laws, and home rule charter.

Soon after the formation of the Republic of Texas supplicants appeared at the bar of its Congress in quest of municipal charters of incorporation. Special charters were issued by the Congress and subsequently by the Legislature of the State Government. After the adoption of the present Constitution, general laws were enacted under which cities might incorporate by following a specified procedure.

In defining the powers which a city may exercise under special charters or the general laws, the courts have adopted the "rule of strict construction." "Being a creature of the state, a municipal corporation possesses only such powers as the state grants to it in express terms, or such as are necessarily implied from the express grants, or such as are inherent or indispensable to its corporate existence. Such inherent powers are generally defined to be the right to sue and be sued, to grant, receive, and hold property in the corporate name, to have a seal, to make by-laws and ordinances for the government of the corporation, and to have succession." [28] Furthermore, when "the powers are doubtful, they are held not to exist." [29]

In an effort to vest cities with a degree of local autonomy and to relieve them of the necessity of continually begging additional powers of the Legislature, the "home rule amendment" was adopted in 1912, which provides:

> Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State or of the general laws enacted by the Legislature of this State; said cities may levy, as-

[28] *Ball v. Texarkana Water Corp.*, 127 S. W. 1060 (1910).
[29] *City of Uvalde v. Uvalde Electric & Ice Co.*, 235 S. W. 625 (1921).

sess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent, of the taxable property of such city and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years.[30]

Before the Legislature could meet and adopt an enabling act, twenty-four cities hastily exercised the new prerogative of drafting their own charters. The Legislature, in the enabling act, obligingly legalized these apparently premature moves. The act listed thirty-four things which a city might do, concluding with the statement that such enumeration should not preclude the exercise of other powers incident to the enjoyment of local self-government. Later the court said the amendment was self-executing, the enabling act unnecessary, and mildly chided the Legislature for its over-zealousness.[31]

The amendment was silent upon the procedure of adoption of charters framed under its provisions, but the enabling act remedied this shortcoming. The question of selecting a commission to frame a new charter may be submitted to the electorate on a two-thirds vote of the city council or upon petition of ten per cent of the qualified voters. Provision is made on the ballot bearing such question for the election of a charter commission of not less than fifteen members, nor more than one for each 3,000 inhabitants. Within forty to ninety days after the completion of the work of the commission, the charter is submitted, each section independently, to popular vote. A majority carries.

There has been considerable criticism of the home rule amendment. First, due to the ambiguity of the amendment, there has been confusion on the part of both the Legislature and the courts as to the exact nature of home rule. The quandary of the Legislature is shown in the enumeration of powers in the enabling act. However, the legal aspects of home rule are beginning to become clarified and it is recognized that the effect of the home rule amendment was to vest powers of local government in the electorate of cities of over 5,000 inhabitants wishing to operate under its provisions,

[30] *Constitution,* Art. XI, sec. 5.
[31] *Le Gois v. State,* 190 S. W. 724 (1916).

subject to limitations under the Constitution and general laws of the State. The function of the Legislature in relation to such cities is not to delegate but to limit powers. "We no longer must look to the Legislature to grant to a city power to amend its charter or to insert therein any given provision, but we only look to the acts of the Legislature to see if that body by any provision adopted has placed any limitations on the power of a city to act in the matter." [32] "Since the adoption of said constitutional section [the home rule amendment], there is no longer a necessity for the Legislature to confer power upon such city councils, but it may limit its powers only." [33]

A second criticism is the superiority of general laws of the State to home rule charters, creating an opening for legislative interference with purely local matters. It is the contention of the proponents of home rule that municipal ordinances and charters should prevail over general acts of the Legislature in purely local affairs. The Legislature under its power of passing general laws regulates the working hours of police and firemen, thus showing the defenseless position of home rule cities. Much litigation is necessary to establish the dividing line between local ordinances and general laws. For example, the home rule grant does not include the power to exempt utilities from liabilities in tort.[34] A levy of a gasoline tax by a city under its home rule power is void because of the superiority of general law.[35]

Regardless of the superiority of general laws, a Court of Civil Appeals has declared that the purpose of the home rule amendment "to vest in the municipal corporations a more extended power to enable them to safeguard their life, health, comfort, and property rights of the citizens of such municipalities as should choose to operate under its provisions, cannot be questioned." [36] The extent of these supplementary police powers must be judicially ascertained.

Numerous miscellaneous criticisms of the amendment have been made. The legality of the incorporation of such a city may not be established other than by judicial decision. The prohibition upon amendment or alteration more often than every two years is a

[32] *Le Gois v. State,* 190 S. W. 724 (1916).
[33] *Xydias Amusement Co. v. City of Houston,* 185 S. W. 415 (1916).
[34] *Green v. City of Amarillo,* 244 S. W. 241 (1922). There seems to exist a certain confusion in this decision as to the nature of home rule.
[35] *City of Lubbock v. Magnolia Petroleum Co.,* 6 S. W. (2d) 80 (1928).
[36] *City of Wichita Falls v. Continental Oil Co.,* 5 S. W. (2d) 561 (1928).

requirement of questionable wisdom.[37] No method is provided for the ascertainment of the population of a would-be home rule city.[38]

The rule of strict construction is applied to home rule cities with as great stringency as to cities operating under special charters or general laws. The grant of power must be from the municipal electorate through the city charter rather than from the Legislature, of course. "Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability not authorized thereby, or some legislative act applicable thereto. All acts beyond the scope of the powers granted are void." [39] After having shown the grant of authority to the corporation in its charter, it must be shown that such provision does not conflict with the Constitution or the general laws. "The state Constitution, the Enabling Act, and the general laws of the state in *pari materia* constitute the fundamental laws of home rule cities, and they rank in the order above given." [40]

*Municipal Liability.*—Municipal functions have been divided by the courts into (1) governmental or public, and (2) private or corporate. Torts occasioned by the performance of governmental functions ordinarily entail no damages, whereas the acts of the municipality in its corporate capacity are subject to liability. Fire protection,[41] police protection,[42] health protection, education, parks and playgrounds, and charities and corrections are examples of governmental functions. Electric power plants,[43] street railways,[44] street cleaning, garbage removal and disposal,[45] and waterworks are

[37] This period would be reduced to one year by the provisions of a constitutional amendment to be submitted to the voters at the general election in November, 1934. At the same time there will be submitted another amendment empowering home rule cities to amend their charters so as to provide a four-year term for elective city officials. *General Laws,* 43d Leg., reg. sess., 963-966 (1933).

[38] See Tom Finty, Jr., "Constitutional Handicaps on Texas Cities," *Texas Municipalities,* X, 103-106 (1923); Albert A. Long, "Home Rule in Texas," *ibid.,* VI, 10-19 (1919); W. H. Scott, "Powers and Limitations of Municipalities Under Home Rule Amendment and the Enabling Act," *ibid.,* XV, 212-214 (1928); H. G. James, "Home Rule in Texas," *ibid.,* V, 67-76 (1918).

[39] *Foster v. City of Waco,* 255 S. W. 1104 (1923).

[40] *Cameron v. City of Waco,* 8 S. W. (2d) 249 (1928).

[41] *Barnes v. City of Waco,* 262 S. W. 1081 (1924); *Shanewerk v. City of Fort Worth,* 11 C. A. 271 (1895).

[42] *Stinnett v. City of Sherman,* 43 S. W. 847 (1897).

[43] *City of Greenville v. Branch,* 152 S. W. 478 (1913).

[44] *Green v. City of Amarillo,* 244 S. W. 241 (1922).

[45] *Ostrom v. City of San Antonio,* 94 Tex. 523 (1901); *City of San*

corporate or private functions.[46] The line separating governmental and private functions and thus fixing municipal liability is by no means clear and may vary from case to case. "It would seem that the liability should result from the occasioning of injury and not from the character of the function." [47]

*Municipal Organization.*—Although the commission form of government in its essentials had previously existed in a number of places, it is popularly thought to have originated in Galveston following the disastrous storm of 1900. The old aldermanic form of government collapsed in the crisis, and the Deepwater Committee, an organization of business men previously formed to secure harbor improvements, took the situation in hand and made plans for a new charter, which was enacted by the Legislature in 1901.

The new charter vested the governing powers of the city in a board consisting of three gubernatorial appointees and two elected by the people of the city, but at present all the commissioners are popularly elected.[48] The mayor is the president of the board, may vote, but has no veto power. The commission enacts ordinances, and appoints officers in all departments. The commissioners are not full-time officials, but are supervisors of the four departments. The actual management of the routine work is handled by expert superintendents appointed by the commission. Commissioners having to devote only about two hours a day to their duties, it is possible to secure the services of able citizens for these offices.

With several important changes the Galveston plan was adopted in Houston in 1905 by special act of the Legislature, but was considerably changed following the adoption of the home rule amendment in 1912. The commissioners in Houston are the actual heads of the departments, rather than the lay supervisors. In Galveston the commissioners are elected without reference to any specific department, but candidates in Houston run for election to head a specific department as the Fire Department or the Water Department.

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*Antonio v. Mackey,* 36 S. W. 761 (1913); *City of Coleman v. Price,* 117 S. W. 905 (1909).

[46] *Lenzen v. City of New Braunfels,* 35 S. W. 341 (1896).

[47] Dodd, *op. cit.*

[48] The provision calling for appointment by the Governor was held null in *Ex parte Lewis,* 73 S. W. 811 (1903), by the Court of Criminal Appeals. The Supreme Court later in *Brown v. City of Galveston,* 97 Tex. 1 (1903) held this feature constitutional. The Court of Criminal Appeals in cases involving similar provisions for other cities followed the holding in *Ex parte Lewis* in *Ex parte Levine,* 81 S. W. 1206 (1904), but in *Ex parte Tracey,* 93 S. W. 538 (1905) came around to the Supreme Court view.

From Texas the commission plan was carried to Des Moines and from there spread rapidly over the nation. In 1907 Dallas, Fort Worth, El Paso, Denison, and Greenville adopted the plan. In 1909 Austin, Waco, Palestine, Corpus Christi, and Marshall were granted commission charters by the Legislature, and in the same year a general law was adopted allowing cities to adopt the plan after a referendum. By 1913, however, the commission plan had reached the zenith of its popularity and came to be largely superseded by the council-manager plan.[49]

The heyday of the commission plan passed in the wake of the Dayton flood of 1913. Although the council-manager plan had been used before this time in several places, the movement for its adoption received a potent impetus from the success which attended its use in Dayton. The essentials of the plan were included in the Dayton charter which provided for a commission of five members elected at large for a term of four years. The commission meets once a week and its functions relate to the enactment of ordinances, the making of appropriations, and the appointment of the city manager. Thus the commission is policy-determining, while the manager is the administrative head and responsible for the efficient conduct of the departments. The manager appoints and controls the directors of departments, attends and gives information at commission meetings, keeps the council informed as to the financial status of the city, and sees that all laws and ordinances are enforced. There is complete integration of the administrative machinery and a clear-cut distinction between policy-formation and policy-execution—the most fundamental essentials of the manager plan. The new method of municipal government spread from Dayton until now over 445 cities are operating under it.

The experience of Texas cities with the council-manager plan has been uniformly satisfactory. The advantages accruing under the operation of the plan relate principally to increased municipal services at decreased costs. As the council-manager plan is not provided for by general law, only home rule cities may adopt the plan by charter, although smaller cities may do so by ordinance. Amarillo in 1913 was the first Texas city to change from the commission form of government to the council-manager form. Thirty-nine Texas cities now use the manager form: Austin, Amarillo, Beaumont, Belton, Big Spring, Borger, Brenham, Brownsville,

[49] See Tso-Shuen Chang, *History and Analysis of the Commission and City-Manager Plans of Municipal Government in the United States*, 49-74, 151-152 (1918).

Brownwood, Bryan, Burkburnett, Dallas, Eastland, Fort Worth, Gainesville, Goose Creek, Jacksonville, Kerrville, Longview, Lubbock, Lufkin, Marshall, Mexia, Pampa, Panhandle, Port Arthur, San Angelo, Sherman, Stamford, Sweetwater, Taylor, Teague, Temple, Terrell, Tulia, Tyler, Waco, Wichita Falls, and Yoakum.[50]

Under the provisions of a general law, Texas cities with over 600 inhabitants may adopt the aldermanic or mayor-council form of government. An election for incorporation under the provisions of the law may be called by the county judge on petition of fifty electors of the city or town. Any city already incorporated may adopt the provisions of the law by a two-thirds vote of the city council.

The officials under this system include a mayor and two aldermen from each ward, a treasurer, an assessor and collector, a secretary, a city attorney, a marshal, a city engineer, and other officers as directed by the council. The office of treasurer, assessor and collector, city attorney, and city engineer may be dispensed with and the duties of such officers be conferred upon other officers. The powers and duties of these officials as well as the powers of the municipal corporation are set out at considerable length in the statute.

The city council is composed of the mayor and two aldermen from each ward. The aldermen must reside in their ward and shall hold no other employment under the city government nor be directly or indirectly interested in any work, business, or contract of the city. The council has the power to pass, amend, or repeal ordinances and to enforce the observance of such regulations with the limitation that no fine shall exceed one hundred dollars. Forty-three specific grants are made to the city council including power to care for health, police, charities, streets, street lighting, building regulations, water supply, market, parks, libraries, taxation, fire protection, and public utilities.

The mayor must be a qualified elector and must have resided twelve months within the city at the time of his election. He is the chief executive officer of the city and presides over meetings of the council. He may summon special sessions of the council, make recommendations to it, and veto its acts. By a majority vote, after reconsideration, the council may pass an ordinance over the mayor's veto.

The city marshal is ex officio chief of police. It is his duty to at-

[50] *City Manager Year Book, 1933,* 332-333.

tend meetings of the corporation court, to execute warrants, quell riots, disorders, and disturbances, arrest violators of the peace, and in general to prevent and suppress crime. He is usually popularly elected.

The city secretary attends council meetings, keeps minutes of the proceedings, engrosses and enrolls its ordinances, preserves all papers and files of the corporation. He draws warrants on the treasurer, and performs other duties as may be required by law, such as the duties of the clerk of the corporation court or of the tax assessor and collector.

The treasurer furnishes bond in favor of the city and is the custodian of the corporate funds. He receives all city funds and makes payments from the city treasury on proper order. He is charged with the duty of rendering a report to the council quarterly, and to publish semi-annually a report showing the receipts and expenditures for the six months next preceding, and of the general condition of the treasury.

The assessor and collector makes the assessments, collects the taxes, and performs other similar duties ordinarily connected with such positions. In small cities it is the custom to place the duties of the assessor and collector and often the treasurer upon the city secretary. A city health officer and health inspectors are appointed by the city council.

The corporation court has jurisdiction within the city's territorial limits of criminal cases arising under the municipal ordinances and also has concurrent jurisdiction with the justice of the peace in criminal cases arising under State laws, in which punishment is by fine not exceeding two hundred dollars. The judge of the corporation court is known as the recorder. The council may provide for the mayor to act as recorder. It may elect a clerk of the corporation court or impose the duties of the position upon the city secretary.

*Personnel.*—In four of the larger cities of the State there have been systematic installations of the merit system. The merit idea may be followed in principle in other cities, but only in Dallas, Fort Worth, Houston, and El Paso have commissions been set up for its administration. In each of these cities a substantial number of the non-policy-determining employees are included in the classified service. Each commission has a secretary who gives examinations and grades the papers. Removal, ordinarily, may not be effected without consent of the commission. The advocates of the merit

principle predict the eventual adoption of the merit system in the chief cities of the State.[51]

*Central Control of Municipalities.*—As has been pointed out, central supervision may take the form of administrative, legislative, or judicial control. The power which the Legislature has over cities, whether incorporated under the general laws or organized under the home rule amendment, has been indicated. Judicial control arises, of course, through decisions on cases involving the legality of acts of the municipal corporation or its officers.

Administrative control has been developed to a limited extent over Texas cities. The principal financial control is the requirement that municipal bond issues be examined and approved by the Attorney-General and registered by the Comptroller. The city treasurer makes an annual report to the Comptroller showing the general financial condition of the city, and a copy of the annual municipal budget must be filed with the Comptroller. An annual report on taxes and indebtedness must be furnished to the State Auditor.

In health matters the State Board of Health has a certain amount of control over local health officers, but it has been the practice to secure local action by coöperation rather than by coercion. The State Board may remove the city health officer. Through its Bureau of Sanitary Engineering, inspections and recommendations are made to about 350 of the 400 municipal water supply systems in the State annually. In the supervision of sewage disposal plants the department has attempted to enforce the anti-stream pollution act.

Educational control aims to equalize opportunities, standardize curricula, and raise standards of the school equipment and instructing staff. After meeting certain requirements State aid is granted to public schools. Before the work of a high school is accredited for college entrance it must meet with the approval of the State Department of Education.

Although there is no State utility commission, the gas utility division of the Railroad Commission regulates companies furnishing natural gas to cities. The city may reduce the rate, but the company affected may appeal to the Commission, which holds a hearing and determines if such a rate is reasonable. Applications for increasing the rate are made to the city government. If re-

[51] B. F. Wright, Jr., *The Merit System in American States with Special Reference to Texas,* University of Texas Bulletin, No. 2305, 91-96 (1923). See also, reports and rules of the various municipal civil service commissions of Texas.

jected, the utility may appeal to the Commission. The other utilities are free from central administrative control, but the cities may carry the rate question to the courts for settlement.

The State Board of Insurance Commissioners exercises a certain amount of control over municipalities. Fire hazards are eliminated by the city fire marshal at the instance of the State officials. By virtue of its control of fire insurance rates, the Commission virtually controls types of water main and supply construction and greatly stimulates municipal activity to eliminate dangerous fire hazards.[52]

*League of Texas Municipalities.*—An organization of the cities of Texas was formed in 1913 at the suggestion of A. P. Woolridge, Mayor of Austin, and Professor Herman G. James, Director of the Bureau of Municipal Research of the University of Texas, with the title of the "League of Texas Municipalities." For several years it was operated in connection with the Bureau of Municipal Research at the University of Texas, but with the discontinuance of the Bureau in 1925, the League set up independently of the University and at present maintains headquarters at Houston. The League furnishes legal and other technical information to its member cities, and endeavors to secure the passage of needed statutes by the Legislature. Its annual conventions permit municipal officials to meet and discuss their problems. A monthly magazine, *Texas Municipalities,* is published by the League, which contains news of the League and articles of interest to municipal officials. The membership numbers 195 cities. The city managers of Texas maintain an organization called the Texas Association of City Managers, and there is also a City Attorneys' Association.

### REFERENCES

For a discussion of counties and municipalities in general, see C. P. Patterson, *American Government,* rev. ed., Chs. XLI-XLVI (1933), and other standard texts on American government and state government. See also Judd and Hall, *The Texas Constitution,* Chs. XIV, XV. An excellent analysis of the statutes affecting counties is made by H. G. James, *County Government in Texas* (1925). The statutes concerning both counties and cities may be found in the *Revised Civil Statutes* (1925) or with annotations in Vernon's *Annotated Revised Civil*

[52] J. E. Pate, "Central Administrative Control over Municipalities in the Southwest," *Southwestern Political and Social Science Quarterly,* VIII, 225-252 (1927).

*Statutes of the State of Texas* (1926). A good account of the commission plan in Texas cities is given by Tso-Shuen Chang, *History and Analysis of the Commission and City-Manager Plans of Municipal Government in the United States,* Chs. III and V (1918). An analysis of the legal status of home rule cities has been made by Frank M. Stewart, "What Municipal Home Rule Means Today: Texas After Twenty Years," *National Municipal Review,* XXI, 434-441 (1932). For articles on specific phases of municipal affairs and current problems, consult the files of *Texas Municipalities.* The annual reports of the larger cities may be examined with profit. During the existence of the Bureau of Municipal Research and Reference, later called the Bureau of Government Research, at the University of Texas, it published various bulletins under the title, *Municipal Research Series.* Although published several years ago, much of this material remains valuable. Two Masters' Theses prepared by students at the University of Texas should be consulted: V. O. Key, Jr., *A History of Texas County Government* (1930), and Mary Evelyn Winfrey, *Municipal Home Rule in Texas* (1931). A comprehensive study of county government in Texas, prepared by Dr. Wallace C. Murphy after extensive field investigations, has been published by the University of Texas: *County Government and Administration in Texas,* University of Texas Bulletin, No. 3324 (1933).

# APPENDIX

# THE CONSTITUTION OF THE STATE OF TEXAS [1]

## Ratified February 15, 1876.

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## PREAMBLE.

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

## ARTICLE I.

### BILL OF RIGHTS.

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

SEC. 1. TEXAS FREE AND INDEPENDENT.—Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

SEC. 2. ALL POLITICAL POWER IS INHERENT IN THE PEOPLE.—All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

[1] As amended to date (September, 1933). The text of the Constitution here printed is taken from the *Texas Legislative Manual,* 42nd Legislature (1931), which in its Foreword contains the following comment: "The Texas Constitution included herein is an exact copy of the original of 1876 with the amendments up to date. Errors in spelling, et cetera, appear just as they are in the original documents."

SEC. 3. ALL FREE MEN HAVE EQUAL RIGHTS.—All freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

SEC. 4. THERE SHALL BE NO RELIGIOUS TEST FOR OFFICE.—No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall anyone be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

SEC. 5. HOW OATHS SHALL BE ADMINISTERED.—No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

SEC. 6. FREEDOM IN RELIGIOUS WORSHIP GUARANTEED; LIBEL.—All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

SEC. 7. NO APPROPRIATION FOR SECTARIAN PURPOSES.—No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

SEC. 8. LIBERTY OF SPEECH AND PRESS GUARANTEED.—Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when

the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the Court, as in other cases.

Sec. 9. No Unreasonable Seizures and Searches Allowed. —The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Section 10. Right of Accused Persons in Criminal Prosecutions.—In all criminal prosecutions the accused shall hav a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

Sec. 11. Bail.—All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Sec. 12. The Writ of Habeas Corpus.—The writ of Habeas Corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Sec. 13. Excessive Bail and Fine and Unusual Punishment, Prohibited; Courts Open.—Excessive bail shall not be

required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

SEC. 14. NO PERSON SHALL BE PUT TWICE IN JEOPARDY.—No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

SEC. 15. RIGHT OF TRIAL BY JURY.—The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

SEC. 16. THERE SHALL BE NO BILL OF ATTAINDER OR EX POST FACTO LAW.—No bill of attainder, or *ex post facto* law, retroactive law, or any law impairing the obligation of contracts, shall be made.

SEC. 17. PRIVILEGES AND FRANCHISES; EMINENT DOMAIN.—No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

SEC. 18. NO IMPRISONMENT FOR DEBT.—No person shall ever be imprisoned for debt.

SEC. 19. DUE COURSE OF LAW.—No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

SEC. 20. NO OUTLAWRY OR DEPORTATION.—No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

SEC. 21. CORRUPTION OF BLOOD; FORFEITURE; SUICIDES.—No conviction shall work corruption of blood, or forfeiture of estate,

and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

SEC. 22. TREASON.—Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 23. RIGHT TO BEAR ARMS.—Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

SEC. 24. MILITARY SUBORDINATE TO CIVIL AUTHORITY.—The military shall at all times be subordinate to the civil authority.

SEC. 25. QUARTERING SOLDIERS.—No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

SEC. 26. PERPETUITIES; MONOPOLIES; PRIMOGENITURE; ENTAILMENTS.—Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

SEC. 27. RIGHT OF PETITION GUARANTEED.—The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

SEC. 28. POWER TO SUSPEND LAWS.—No power of suspending laws in this State shall be exercised except by the Legislature.

SEC. 29. "BILL OF RIGHTS" INVIOLATE.—To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

## ARTICLE II.

### THE POWERS OF GOVERNMENT.

SEC. 1. DEPARTMENTS OF GOVERNMENT TO BE KEPT DISTINCT.—The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, towit: Those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

## ARTICLE III.

### LEGISLATIVE DEPARTMENT.

SEC. 1. THE LEGISLATURE; HOUSE AND SENATE.—The Legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled "The Legislature of the State of Texas."

SEC. 2. NUMBER OF MEMBERS LIMITED.—The Senate shall consist of thirty-one members, and shall never be increased above this number. The House of Representatives shall consist of ninety-three members until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter, the number of Representatives may be increased by the Legislature, upon the ratio of not more than one Representative for every fifteen thousand inhabitants; provided, the number of Representatives shall never exceed one hundred and fifty.

SEC. 3. ELECTION OF SENATORS; NEW APPORTIONMENT.—The Senators shall be chosen by the qualified electors for the term of four years; but a new Senate shall be chosen after every apportionment, and the Senators elected after each apportionment shall be divided by lot into two classes. The seats of the Senators of the first class shall be vacated at the expiration of the first two years, and those of the second class at the expiration of four years, so that onehalf of the Senators shall be chosen biennially thereafter.

SEC. 4. ELECTION OF REPRESENTATIVES; TERM OF OFFICE.—The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their election.

SECTION 5. TIME OF MEETING; METHOD OF PROCEDURE.—The Legislature shall meet every two years at such time as may be provided by law and at other times when convened by the Governor. When convened in regular session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided that during the succeeding thirty days of the regular session of the Legislature the various committees of each House shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor; provided further that during the following sixty days the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided however, either House may otherwise determine its order of business by an affirmative vote of four-fifths of its membership.

SEC. 6. QUALIFICATIONS OF SENATORS.—No person shall be a Senator, unless he be a citizen of the United States, and, at the time of his election a qualified elector of this State, and shall have been a resident of this State five years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-six years.

SEC. 7. QUALIFICATIONS OF REPRESENTATIVES.—No person shall be a Representative, unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.

SEC. 8. EACH HOUSE TO JUDGE QUALIFICATIONS OF ITS OWN MEMBERS.—Each House shall be the judge of the qualifications

and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.

SEC. 9. PRESIDENT PRO TEM. OF THE SENATE; SPEAKER OF HOUSE; OFFICERS.—The Senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members President *pro tempore,* who shall perform the duties of the Lieutenant Governor in any case of absence or disability of that officer, and whenever the said office of Lieutenant Governor shall be vacant. The House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members; And each House shall choose its other officers.

SEC. 10. QUORUM.—Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may provide.

SEC. 11. RULES; POWER TO PUNISH AND EXPEL.—Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offense.

SEC. 12. JOURNAL; YEAS AND NAYS.—Each House shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the journals.

SEC. 13. VACANCIES, HOW FILLED.—When vacancies occur in either House, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill such vacancies; and should the Governor fail to issue a writ of election to fill any such vacancy within twenty days after it occurs, the returning officer of the district in which such vacancy may have happened, shall be authorized to order an election for that purpose.

SEC. 14. MEMBERS OF LEGISLATURE PRIVILEGED FROM ARREST.—Senators and Representatives shall, except in cases of treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

SEC. 15. EACH HOUSE MAY PUNISH DISORDERLY CONDUCT.—Each House may punish, by imprisonment, during its sessions, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

SEC. 16. SESSIONS TO BE OPEN.—The sessions of each House shall be open, except the Senate when in Executive session.

SEC. 17. ADJOURNMENTS.—Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the Legislature may be sitting.

SEC. 18. INELIGIBILITY OF MEMBERS TO CERTAIN OFFICES; NOT TO BE INTERESTED IN CONTRACTS.—No Senator or Representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State, which shall have been created, or the emoluments of which may have been increased during such term; no member of either House shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the Legislature; and no member of either House shall vote for any other member for any office whatever, which may be filled by a vote of the Legislature, except in such cases as are in this Constitution provided. Nor shall any member of the Legislature be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

SEC. 19. WHAT OFFICERS INELIGIBLE TO MEMBERSHIP IN LEGISLATURE.—No judge of any Court, Secretary of State, Attorney General, Clerk of any Court of Record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

SEC. 20. RECEIVERS OR DISBURSERS OF PUBLIC FUNDS NOT ELIGIBLE TO MEMBERSHIP IN THE LEGISLATURE UNTIL DISCHARGE RECEIVED.—No person who at any time may have been a collector of taxes, or who may have been otherwise entrusted with public money, shall be eligible to the Legislature, or to any office of profit or trust under the State government, until he shall have

obtained a discharge for the amount of such collections, or for all public moneys with which he may have been entrusted.

SEC. 21. FREEDOM IN DEBATE.—No member shall be questioned in any other place for words spoken in debate in either House.

SEC. 22. PERSONAL INTEREST IN MEASURE OR BILL.—A member who has a personal or private interest in any measure or bill, proposed, or pending before the Legislature, shall disclose the fact to the House, of which he is a member, and shall not vote thereon.

SEC. 23. REMOVAL VACATES OFFICE.—If any Senator or Representative remove his residence from the district or county for which he was elected, his office shall thereby become vacant, and the vacancy shall be filled as provided in section 13 of this article.

SEC. 24. MILEAGE AND PER DIEM.—Members of the Legislature shall receive from the public Treasury a per diem of not exceeding $10.00 per day for the first 120 days of each session and after that not exceeding $5.00 per day for the remainder of the session.

In addition to the per diem the members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed $2.50 for every 25 miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each county seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called within one day after the adjournment of a regular or called session.

SEC. 25. SENATORIAL DISTRICTS, HOW APPORTIONED.—The State shall be divided into Senatorial Districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one Senator; and no single county shall be entitled to more than one Senator.

SEC. 26. REPRESENTATIVE DISTRICTS, HOW APPORTIONED.—The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the

House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more representatives, such representative or representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

Sec. 27. Election of Members.—Elections for Senators and Representatives shall be general throughout the State, and shall be regulated by law.

Sec. 28. Reapportionment at Each Census.—The Legislature shall, at its first session after the publication of each United States decennial census, apportion the State into Senatorial and Representative districts, agreeably to the provisions of Sec's 25 and 26 of this Article; and until the next decennial census, when the first apportionment shall be made by the Legislature, the State shall be, and it is hereby divided into Senatorial and Representative districts as provided by an Ordinance of the Convention on that subject.

## PROCEEDINGS.

Sec. 29. Enacting Clause.—The enacting clause of all laws shall be: "Be it enacted by the Legislature of the State of Texas."

Sec. 30. Laws to Be Passed by Bill; Amendments.—No law shall be passed, except by bill, and no bill shall be so amended in its passage through either House, as to change its original purpose.

Sec. 31. Bills May Originate in Either House and May be Amended or Rejected by the Other House.—Bills may originate in either House, and, when passed by such House, may be amended altered or rejected by the other.

Sec. 32. Bills to Be Read on Three Several Days; Suspension of Rule.—No bill shall have the force of a law, until it has been read on three several days in each House, and free discussion allowed thereon; but in cases of imperative public neces-

sity (which necessity shall be stated in a preamble or in the body of the bill) four-fifths of the House, in which the bill may be pending, may suspend this rule, the yeas and nays being taken on the question of suspension and entered upon the journals.

Sec. 33. Bills for Raising Revenue.—All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

Sec. 34. Bill or Resolution Defeated, Not to Be Considered Again.—After a bill has been considered and defeated by either House of the Legislature, no bill containing the same substance shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance, shall be considered at the same session.

Sec. 35. Bills to Contain But One Subject, Which Must Be Expressed in Title.—No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed.

Sec. 36. Reviving or Amending Laws.—No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length.

Sec. 37. Reference to Committees.—No bill shall be considered, unless it has been first referred to a committee and reported thereon, and no bill shall be passed which has not been presented and referred to and reported from a Committee at least three days before the final adjournment of the Legislature.

Sec. 38. Signing Bills.—The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

Sec. 39. When Laws Take Effect.—No law passed by the Legislature, except the general appropriation act, shall take ef-

fect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

Sec. 40. Business and Duration of Special Sessions.—When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

Sec. 41. Elections; Votes, How Taken.—In all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given *viva voce,* except in the election of their officers.

## REQUIREMENTS AND LIMITATIONS.

Sec. 42. To Pass Necessary Laws.—The Legislature shall pass such laws as may be necessary to carry into effect the provisions of this Constitution.

Sec. 43. Revision and Publication of Laws.—The first session of the Legislature under the Constitution shall provide for revising, digesting and publishing the laws, civil and criminal; and a like revision, digest and publication may be made every ten years thereafter; provided, that in the adoption of and giving effect to any such digest or revision, the Legislature shall not be limited by sections 35 and 36 of this Article.

Sec. 44. Compensation of Officers; Payment of Claims.—The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ

anyone in the name of the State, unless authorized by pre-existing law.

SEC. 45. CHANGE OF VENUE.—The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the Legislature shall pass laws for that purpose.

SEC. 46. LEGISLATURE SHALL ENACT VAGRANT LAWS.—The Legislature shall, at its first session after the adoption of this Constitution, enact effective vagrant laws.

SEC. 47. LOTTERIES SHALL BE PROHIBITED.—The Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other States.

SEC. 48. POWER TO LEVY TAXES LIMITED.—The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of the State:

The erection and repairs of Public Buildings:

The benefit of the sinking fund, which shall not be more than two per centum of the public debt; and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate.

The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical college of Texas.

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employees of the State Government, and all incidental expenses connected therewith.

The support of the Blind Asylum, the Deaf and Dumb Asylum, and the Insane Asylum; the State Cemetery and the public grounds of the State:

The enforcement of quarantine regulations on the coast of Texas:

The protection of the frontier:

SEC. 49. PURPOSE FOR WHICH DEBTS MAY BE CREATED.—No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; and the debt created to supply deficiencies in the revenue, shall never exceed in the aggregate at any one time two hundred thousand dollars.

SEC. 50. CREDIT OF STATE NOT TO BE PLEDGED.—The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any indidivual, association of individuals, municipal or other corporation whatsoever.

SECTION 51. TAX LEVY AUTHORIZED FOR CONFEDERATE SOLDIERS AND SAILORS AND THEIR WIDOWS.—The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; provided, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors under such regulations and limitations as may be deemed by the Legislature as expedient, and to their widows in indigent circumstances under such regulations and limitations as may be deemed by the Legislature as expedient; to indigent and disabled soldiers, who, under special laws of the State of Texas, during the war between the States, served in organizations for the protection of the frontier against Indian raids or Mexican marauders, and to indigent and disabled soldiers of the militia who were in active service during the war between the States, and to the widows of such soldiers who are in indigent circumstances, and who are or may be eligible to receive aid under such regulations and limitations as may be deemed by the Legislature as expedient; and also grant for the establishment and maintenance of a home for said soldiers and sailors, their wives and widows and women who aided in the Confederacy, under such regulations and limitations as may be provided for by law; provided the Legislature may provide for husband and wife to remain together in the home. There is hereby levied in addition to all other taxes heretofore permitted by the Constitution of Texas, a State ad valorem tax on property of seven ($.07) cents on the one hundred ($100) dollars

valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate army and navy, frontier organizations and the militia of the State of Texas, and for the widows of such soldiers serving in said armies, navies, organizations or militia; provided that the Legislature may reduce the tax rate herein levied, and provided further, that the provisions of this section shall not be construed so as to prevent the grant of aid in cases of public calamity.

Section 51a. The Legislature shall have power to authorize by law the issuance and sale of the bonds of the State of Texas, not to exceed the sum of Twenty Million ($20,000,000.00) Dollars, bearing interest at a rate not to exceed Four and one-half (4½%) per centum per annum; and payable serially or otherwise not more than Ten (10) years from their date, and said bonds shall be sold for not less than par and accrued interest and no form of commission shall be allowed in any transaction involving said bonds. The proceeds of the sale of such bonds to be used in furnishing relief and work relief to needy and distressed people and in relieving the hardships resulting from unemployment, but to be fairly distributed over the State and upon such terms and conditions as may be provided by law and the Legislature shall make such appropriations as are necessary to pay the interest and principal of such bonds as the same becomes due. The power hereby granted to the Legislature to issue bonds hereunder is expressly limited to the amount stated and to two years from and after the adoption of this grant of power by the people. Provided that the Legislature shall provide for the payment of the interest and redemption of any bonds issued under the terms hereof from some source other than a tax on real property and the indebtedness as evidenced by such bonds shall never become a charge against or lien upon any property, real or personal, within this State.

Section 52. Counties, Cities, Etc., Not to Be Authorized to Grant Money or to Become Stockholders.—The legislature shall have no power to authorize any County, City, town or other political Corporation or Subdivision of the State to lend its credit or to grant public money or thing of vatue in aid of, or to any individual, association or corporation whatsoever, or to become a Stockholder in such Corporation, association or company; provided, however, that under legislative provision any County, any Political Subdivision of a County, any number of adjoining Counties, or any political Subdivision of the State, or any defined dis-

trict now or hereafter to be described and defined within the State of Texas, and which may or may not include, towns, villages or municipal Corporations, upon a vote of a two thirds majority of the resident property tax payers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the *limits* imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the legislature may authorize, and in such manner as it may authorize the same, for the following purposes towit:

(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and water ways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof.

Sec. 53. Extra Compensation by Municipal Corporations. —The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law.

Sec. 54. Liens on Railroads.—The Legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in anywise change the tenor or meaning, or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

Section 55. Legislature Has No Power to Release Debts.— The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or indi-

vidual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years.

SEC. 56. LOCAL AND SPECIAL LAWS.—The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

The creation, extension or impairing of liens:

Regulating the affairs of counties, cities, towns, wards or school districts:

Changing the names of persons or places:

Changing the venue in civil or criminal cases:

Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys:

Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State:

Vacating roads, town plats, streets or alleys:

Relating to cemeteries, grave-yards or public grounds not of the State:

Authorizing the adoption or legitimation of children:

Locating or changing county seats:

Incorporating cities, towns or villages, or changing their charters:

For the opening and conducting of elections, or fixing or changing the places of voting:

Granting divorces:

Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts:

Changing the law of descent or succession:

Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate:

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables:

Regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes:

Fixing the rate of interest:

Affecting the estates of minors, or persons under disability:

Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury:

Exempting property from taxation:

Regulating labor, trade, mining and manufacturing:

Declaring any named person of age:

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability:

Giving effect to informal or invalid wills or deeds:

Summoning or impaneling grand or petit juries:

For limitation of civil or criminal actions:

For incorporating railroads or other works of internal improvements:

And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities.

SEC. 57. NOTICE OF LOCAL OR SPECIAL LAWS.—No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature, before such act shall be passed.

SEC. 58. SESSIONS TO BE HELD AT AUSTIN, SEAT OF GOVERNMENT.—The Legislature shall hold its sessions at the City of Austin, which is hereby declared to be the seat of government.

## ARTICLE IV.

### EXECUTIVE DEPARTMENT.

SEC. 1. OFFICERS OF EXECUTIVE DEPARTMENT.—The Executive Department of the State shall consist of a Governor, who shall be the Chief Executive Officer of the State, a Lieutenant Gov-

ernor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office and Attorney General.

SEC. 2. ELECTION OF EXECUTIVE OFFICERS.—All the above officers of the Executive Department (except Secretary of State) shall be elected by the qualified voters of the State at the time and places of election for members of the Legislature.

SEC. 3. ELECTION RESULTS; TIES; CONTESTS.—The returns of every election for said Executive Officers, until otherwise provided by law, shall be made out, sealed up, and transmitted by the returning officers prescribed by law, to the seat of Government, directed to the Secretary of State, who shall deliver the same to the Speaker of the House of Representatives, as soon as the Speaker shall be chosen, and the said Speaker shall, during the first week of the session of the Legislature, open and publish them in the presence of both Houses of the Legislature. The person, voted for at said election, having the highest number of votes for each of said offices respectively, and being constitutionally eligible, shall be declared by the Speaker, under sanction of the Legislature, to be elected to said office. But, if two or more persons shall have the highest and an equal number of votes for either of said offices, one of them shall be immediately chosen to such office by joint vote of both Houses of the Legislature. Contested elections for either of said offices, shall be determined by both Houses of the Legislature in joint session.

SEC. 4. GOVERNOR, WHEN INSTALLED; TERM; QUALIFICATIONS.—The Governor shall be installed on the first Tuesday after the organization of the Legislature, or as soon thereafter as practicable, and shall hold his office for the term of two years, or until his successor shall be duly installed. He shall be at least thirty years of age, a citizen of the United States, and shall have resided in this State at least five years immediately preceding his election.

SEC. 5. GOVERNOR'S SALARY AND MANSION.—He shall, at stated times, receive as compensation for his services an annual salary of four thousand dollars and no more, and shall have the use and occupation of the Governor's mansion, fixtures and furniture.

SEC. 6. GOVERNOR TO HOLD NO OTHER OFFICE, ETC.—During the time he holds the office of Governor, he shall not hold any other

office: civil, military or corporate; nor shall he practice any profession, and receive compensation, reward, fee, or the promise thereof for the same; nor receive any salary, reward or compensation or the promise thereof from any person or corporation, for any service rendered or performed during the time he is Governor, or to be thereafter rendered or performed.

SEC. 7. COMMANDER-IN-CHIEF; MAY CALL OUT MILITIA.—He shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, repel invasions, and protect the frontier from hostile incursions by Indians or other predatory bands.

SEC. 8. GOVERNOR MAY CONVENE LEGISLATURE.—The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government, or at a different place, in case that should be in possession of the public enemy or in case of the prevalence of disease thereat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.

SEC. 9. GOVERNOR'S MESSAGE; TO ACCOUNT FOR MONEYS; PRESENT ESTIMATES, ETC.—The Governor shall, at the commencement of each session of the Legislature, and at the close of his term of office, give to the Legislature information, by message, of the condition of the State; and he shall recommend to the Legislature such measures as he may deem expedient. He shall account to the Legislature for all public moneys received and paid out by him, from any funds subject to his order, with vouchers; and shall accompany his message with a statement of the same. And at the commencement of each regular session, he shall present estimates of the amount of money required to be raised by taxation for all purposes.

SEC. 10. GOVERNOR SHALL CAUSE THE LAWS TO BE EXECUTED; INTERCOURSE WITH OTHER STATES.—He shall cause the laws to be faithfully executed and shall conduct, in person, or in such manner as shall be prescribed by law, all intercourse and business of the State with other States and with the United States.

SEC. 11. GOVERNOR MAY ISSUE PARDONS, REMIT FINES, ETC.—In all criminal cases, except treason and impeachment, he shall

have power after conviction, to grant reprieves, commutations of punishment and pardons; and under such rules as the Legislature may prescribe, he shall have power to remit fines and forfeitures. With the advice and consent of the Senate, he may grant pardons in cases of treason, and to this end he may respite a sentence therefor, until the close of the succeeding session of the Legislature; *provided,* that in all cases of remissions of fines and forfeitures, or grants of reprieve, commutation of punishment or pardon, he shall file in the office of the Secretary of State his reasons therefor.

Sec. 12. Governor to Fill Vacancies in State and District Offices.—All vacancies in State or District Offices, except members of the Legislature, shall be filled unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make further nominations, until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate; but may appoint some other person to fill the vacancy until the next session of the Senate or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter.

Sec. 13. Where Governor Shall Reside.—During the session of the Legislature the Governor shall reside where its sessions are held and at all other times at the seat of government, except when by act of the Legislature, he may be required or authorized to reside elsewhere.

Sec. 14. Approval of Bills; Veto Bill Not Returned to Become a Law.—Every bill which shall have passed both houses of the Legislature shall be presented to the Governor for his approval. If he approve he shall sign it; but if he disapprove it, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and proceed to reconsider it. If after such reconsidera-

tion, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other House, by which likewise it shall be reconsidered; and, if approved by two-thirds of the members of that House, it shall become a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of State and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the Bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect. If the Legislature be in session, he shall transmit to the House in which the bill originated a copy of such statement and the items objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each House, the same shall be part of the law, notwithstanding the objections of the Governor. If any such bill, containing several items of appropriation, not having been presented to the Governor ten days (Sundays excepted) prior to adjournment, be in the hands of the Governor at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any items thereof and make proclamation of the same, and such item or items shall not take effect.

Sec. 15. What to Be Presented for Approval.—Every order, resolution or vote to which the concurrence of both Houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, shall be approved by him; or, being disapproved, shall be repassed by both Houses, and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.

SEC. 16. LIEUTENANT GOVERNOR; ELECTION; TERM; POWERS AND DUTIES.—There shall also be a Lieutenant Governor, who shall be chosen at every election for Governor by the same electors, in the same manner, continue in office for the same time, and possess the same qualifications. The electors shall distinguish for whom they vote as Governor and for whom as Lieutenant Governor. The Lieutenant Governor, shall by virtue of his office, be President of the Senate, and shall have, when in Committee of the Whole, a right to debate and vote on all questions; and when the Senate is equally divided to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or of his impeachment or absence from the State, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified; or until the Governor impeached, absent or disabled, shall be acquitted, return, or his disability be removed.

SEC. 17. VACANCY IN OFFICE; COMPENSATION.—If, during the vacancy in the office of Governor, the Lieutenant Governor should die, resign, refuse to serve, or be removed from office, or be unable to serve; or if he shall be impeached or absent from the State, the President of the Senate, for the time being, shall, in like manner, administer the Government until he shall be superseded by a Governor or Lieutenant Governor. The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation and mileage which shall be allowed to the members of the Senate, and no more; and during the time he administers the Government, as Governor, he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. The President, for the time being, of the Senate, shall, during the time he administers the Government, receive in like manner the same compensation, which the Governor would have received had he been employed in the duties of his office.

SEC. 18. SUCCESSION TO GOVERNORSHIP.—The Lieutenant Governor or President of the Senate succeeding to the office of Governor, shall, during the entire term to which he may succeed, be under all the restrictions and inhibitions imposed in this Constitution on the Governor.

SEC. 19. SEAL OF STATE; SECRETARY OF STATE TO KEEP, ETC.—There shall be a Seal of the State which shall be kept by the Secretary of State, and used by him officially under the direction of the Governor. The Seal of the State shall be a star of five points encircled by olive and live oak branches, and the words "The State of Texas."

SEC. 20. COMMISSIONS TO BE SIGNED AND SEALED.—All commissions shall be in the name and by the authority of the State of Texas, sealed with the State seal, signed by the Governor and attested by the Secretary of State.

SEC. 21. SECRETARY OF STATE; TERM; DUTIES; COMPENSATION.—There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary of two thousand dollars and no more.

SEC. 22. ATTORNEY GENERAL; TERM; DUTIES; RESIDENCE; SALARY.—The Attorney General shall hold his office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all Private Corporations, and, from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any Private Corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage, not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of the Government during his continuance in office. He shall receive for his services an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law; *provided,* that the

fees which he may receive shall not amount to more than two thousand dollars annually.

Sec. 23. Comptroller, Treasurer, and Commissioner of the General Land Office; Terms; Salaries; Residence; Fees. —The Comptroller of Public Accounts, the Treasurer and the Commissioner of the General Land Office shall each hold office for the term of two years, and until his successor is qualified; receive an annual salary of two thousand and five hundred dollars, and no more; reside at the Capital of the State during his continuance in office, and perform such duties as are or may be required of him by law. They and the Secretary of State shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section, or in his office, shall be paid, when received, into the State Treasury.

Sec. 24. Officers to Account to the Governor; Duty of Governor; False Reports.—An account shall be kept by the officers of the Executive Department, and by all officers and managers of State institutions, of all moneys and choses in action received and disbursed or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semi-annual report thereof shall be made to the Governor under oath. The Governor may, at any time, require information in writing from any and all of said officers or managers, upon any subject relating to the duties, condition, management and expenses of their respective offices and institutions, which information shall be required by the Governor under oath, and the Governor may also inspect their books, accounts, vouchers and public funds; and any officer or manager who, at any time, shall wilfully make a false report or give false information, shall be guilty of perjury, and so adjudged, and punished accordingly, and removed from office.

Sec. 25. Laws for Investigation of Breaches of Trust.— The Legislature shall pass efficient laws facilitating the investigation of breaches of trust and duty by all custodians of public funds and providing for their suspension from office on reasonable cause shown, and for the appointment of temporary incumbents of their offices during such suspension.

Sec. 26. Notaries Public.—The Governor, by and with the advice and consent of two-thirds of the Senate, shall appoint a con-

venient number of Notaries Public for each county who shall perform such duties as now are or may be prescribed by law.

## ARTICLE V.

### JUDICIAL DEPARTMENT.

SECTION 1. THE SEVERAL COURTS; CRIMINAL COURTS.—The judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in district Courts, in County Courts, in Commissioners Courts, in Courts of justices of the peace, and in such other courts as may be provided by law.

The criminal district court of Galveston and Harris Counties shall continue with the district jurisdiction and organization now existing by law until otherwise provided by law.

The legislature may establish such other Courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

SECTION 2. SUPREME COURT; QUORUM; QUALIFICATIONS; ELECTION; SALARY; VACANCY.—The Supreme Court shall consist of a chief Justice and two associate Justices, any two of whom shall constitute a quorum, and the concurrence of two Judges shall be necessary to the decision of a case. No person shall be eligible to the office of Chief Justice or associate Justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States and of this State and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a Court, or such lawyer and Judge together, at least seven years. Said Chief Justice and associate Justices shall be elected by the qualified voters of the state at a general election, shall hold their offices six years, or until their successors are elected and qualified, and shall each receive an annual salary of four thousand dollars until otherwise provided by law. In case of a vacancy in the office of the Chief Justice of the Supreme Court the Governor shall fill the vacancy until the next general election for State officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The Judges of the Supreme Court who may be in office at

the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified.

SECTION 3. JURISDICTION; TERMS OF COURT.—The Supreme Court shall have appellate jurisdiction only except as herein specified, which shall be coextensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of which the courts of civil appeals have appellate jurisdiction under such restrictions and regulations as the legislature may prescribe. Until otherwise provided by law the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases in the Courts of Civil Appeals in which the judges of any Court of civil appeals may disagree, or where the several Courts of civil appeals may hold differently on the same question of law or where a statute of the State is held void. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said Courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter, be required by law, and he may hold his office for four years and shall be subject to removal by said Court for good cause entered of record on the minutes of said Court who shall receive such compensation as the legislature may provide.

SECTION 3a. The Supreme Court may sit at any time during the year at the seat of government for the transaction of business and each term thereof shall begin and end with each calendar year.

SECTION 4. COURT OF CRIMINAL APPEALS.—The Court of Criminal appeals shall consist of three judges, any two of whom shall constitute a quorum, and the concurrence of two judges shall be

necessary to a decision of said Court, said judges shall have the same qualifications and receive the same salaries as the judges of the Supreme Court. They shall be elected by the qualified voters of the State at a general election and shall hold their offices for a term of six years. In case of a vacancy in the office of a judge of the Court of Criminal Appeals, the Governor shall fill such vacancy by appointment for the unexpired term.

The judges of the Court of appeals who may be in office at the time when this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution and laws as judges of the Court of Criminal Appeals.

Sec. 5. Jurisdiction; Powers; Term; Clerk, Etc.—The Court of Criminal appeals shall have appellate jurisdiction coextensive with the limits of the State in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law.

The Court of Criminal appeals and the judges thereof shall have the power to issue the writ of habeas corpus, and under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The Court of Criminal appeals shall have power upon affidavit or otherwise to ascertain such matters of fact as may necessary to the exercise of its jurisdiction. The Court of Criminal appeals shall sit for the transaction of business from the first Monday in October to the last Saturday of June in each year, at the State Capital and two other places (or the Capital City) if the legislature shall hereafter so provide. The Court of Criminal appeals shall appoint a clerk for each place at which it may sit and each clerk shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for four years unless sooner removed by the Court for good cause entered of record on the minutes of said Court.

Section 6. Supreme Judicial Districts; Courts of Civil Appeals; Jurisdiction; Term; Justices; Election; Salary; Clerk.—The legislature shall as soon as practicable after the adoption of this amendment divide the State into not less than two nor more than three Supreme judicial districts and thereafter into such additional districts as the increase of population and business may require, and shall establish a Court of Civil appeals in each of said districts, which shall consist of a Chief Justice and two

associate justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. Said Court of Civil appeals shall have appellate jurisdiction coextensive with the limits of their respective districts, which shall extend to all civil cases of which the district Courts or county Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said Courts shall be conclusive on all questions of fact brought before them on appeal or error.

Each of said Courts of Civil Appeals shall hold its sessions at a place in its district to be designated by the legislature and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum of three thousand five hundred dollars per annum, until otherwise provided by law.

Said Courts shall have such other jurisdiction, original and appellate as may be prescribed by law.

Each Court of Civil appeals shall appoint a clerk in the same manner as the Clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

Until the organization of the Courts of Civil appeals and Criminal appeals, as herein provided for, the jurisdiction, power and organization and location of the Supreme Court, the Court of appeals and the Commission of appeals shall continue as they were before the adoption of this amendment.

All civil cases which may be pending in the Court of appeals shall as soon as practicable after the organization of the Courts of Civil appeals be certified to, and the records thereof transmitted to the proper Courts of Civil appeals to be decided by said Courts. At the first session of the Supreme Court the Court of Criminal appeals and such of the Courts of civil appeals which may be hereafter created under this article after the first election of the judges of such courts under this amendment. The terms of office of the judges of each Court shall be divided into three Classes and the justices thereof shall draw for the different Classes. Those who shall draw Class No. 1 shall hold their offices two years, those drawing Class No. 2 shall hold their offices for four years and those who may draw class No. 3 shall hold their offices for six years, from the date of their election and until their successors are elected and qualified, and thereafter each of the said judges shall hold his office for six years, as provided in this Constitution.

SECTION 7. JUDICIAL DISTRICTS; JUDGES; THEIR QUALIFICATIONS; RESIDENCE; TERM OF OFFICE; SALARY; TERMS OF COURT. —The state shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a general election, a judge, who shall be a citizen of the United States and of this State, who shall have been a practicing lawyer of this state or a Judge of a Court in this State, for four years next preceding his election, who shall have resided in the district in which he was elected for two years next preceding his election, who shall reside in his district during his term of office, who shall hold his office for the period of four years, and shall receive for his services an annual salary of two thousand and five hundred dollars, until otherwise changed by law. He shall hold the regular terms of his Court at the County Seat of each County in his district at least twice in each year in such manner as may be prescribed by law.

The Legislature shall have power by general or special laws to authohrize the holding of special terms of the Court or the holding of more than two terms in any County for the dispatch of business.

The Legislature shall also provide for the holding of district court when the judge thereof is absent, or is from any cause disabled or disqualified from presiding.

The district judges who may be in office when this amendment takes effect shall hold their offices until their respective terms shall expire under their present election or appointment.

SECTION 8. JURISDICTION AND POWERS OF THE DISTRICT COURTS. —The district court shall have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for slander or defamation of character; of all suits for trial of title to land and for the enforcement of liens thereon; of all suits for the trial of the right of property levied upon by virtue of any writ of execution, sequestration or attachment when the property levied on shall be equal to or exceed in value five hundred dollars; of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest; of contested elections, and said court and the judges thereof shall have power to issue writs

of habeas corpus, mandamus, injunction and certiorari and all writs necessary to enforce their jurisdiction.

The district court shall have appellate jurisdiction and general control in probate matters, over the County Court established in each County, for appoint guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators and guardians, and for the transaction of all business appertaining to estates; and general jurisdiction and general control over executors, administrators, guardians and minors under such regulations as may be prescribed by law. The district Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this Constitution, and such other jurisdiction, original and appellate, as may be provided by law.

Sec. 9. Clerk of the District Court; Term of Office; How Removed; How Vacancy Is Filled.—There shall be a Clerk for the District Court of each county, who shall be elected by the qualified voters for the State and county officers, and who shall hold his office for two years, subject to removal by information, or by indictment of a grand jury, and conviction by a petit jury. In case of vacancy the judge of the District Court shall have the power to appoint a clerk, who shall hold until the office can be filled by election.

Sec. 10. Jury Trial; by Whom Fee Is to Be Paid.—In the trial of all causes in the district courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be impaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.

Section 11. Disqualification of Judges; Special Judges; Exchange of Districts; Vacancies.—No Judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law; or when he shall have been counsel in the case. When the Supreme Court,

the Court of Criminal appeals, the Court of Civil appeals, or any member of either, shall be thus disqualified to hear and determine any case or cases in said Court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the district court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the County where it is pending, in such manner as may be prescribed by law.

And the district Judges may exchange districts, or hold Courts for each other when they deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law.

Section 12. Judges Conservators of Peace; Style of Writs; Prosecution by State.—All judges of courts of this State, by virtue of their office, be conservators of the peace throughout the State. The style of all writs and process shall be, "The State of Texas." All prosecutions shall be carried on in the name and by authority of the State of Texas, and shall conclude: "Against the peace and dignity of the State."

Sec. 13. Jurors, Grand and Petit; Number Required to Return Verdict.—Grand and petit juries in the district courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trials of criminal cases below the grade of felony in the district courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

Sec. 14. Districts Fixed by Ordinance.—The Judicial Districts in this State and the time of holding the courts therein are

fixed by ordinance forming part of this Constitution, until otherwise provided by law.

SEC. 15. COUNTY COURT; ELECTION; TERM OF OFFICE OF COUNTY JUDGES; FEES.—There shall be established in each county in this State a County Court, which shall be a court of record; and there shall be elected in each county, by the qualified voters, a County Judge, who shall be well informed in the law of the State; shall be a conservator of the peace, and shall hold his office for two years, and until his successor shall be elected and qualified. He shall receive as a compensation for his services such fees and perquisites as may be prescribed by law.

SECTION 16. JURISDICTION OF COUNTY COURT; APPEALS; PROBATE JURISDICTION; MAY ISSUE WRITS; JUDGE DISQUALIFIED, WHEN.—The county court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Courts as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed $200, and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value $200, and not exceed $500, inclusive of interest, and concurrent jurisdiction with the district court when the matter in controversy shall exceed $500, and not exceed $1000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of which justices courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed $20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from justices court there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases Civil and Criminal of which the County Court has exclusive or concurrent or original jurisdiction of Civil appeals in Civil cases to the Court of Civil appeals and in such criminal cases to the Court of Criminal appeals, with such exceptions and under such regulations as may be prescribed by law.

The County Court shall have the general jurisdiction of a probate court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle ac-

counts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law; and the County Court, or Judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other court or tribunal inferior to said court. The County Court shall not have criminal jurisdiction in any county where there is a criminal district court, unless expressly conferred by law, and in such counties appeals from justices courts and other inferior courts and tribunals in criminal cases shall be to the Criminal district Court, under such regulations as may be prescribed by law, and in all such cases an appeal shall lie from such district Court to the Court of Criminal appeals.

When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law.

Sec. 17. Terms of County Court for Criminal Business; Prosecutions Commenced by Information; Grand Jury to Inquire Into Misdemeanors; Quashing of Grand Jury Indictments; Jury.—The county court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation as may be provided by law, and said court shall hold a term for criminal business once in every month as may be provided by law. Prosecutions may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law. Grand juries impaneled in the district courts shall enquire into misdemeanors, and all indictment therefor returned into the district courts shall forthwith be certified to the county courts or other inferior courts, having jurisdiction to try them for trial; and if such indictment be quashed in the county, or other inferior court, the person charged, shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an infor-

mation or affidavit. A jury in the county court shall consist of six men; but no jury shall be impaneled to try a civil case unless demanded by one of the parties, who shall pay such jury fee therefor, in advance, as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.

SEC. 18. TERMS OF JUSTICES OF THE PEACE; COUNTY COMMISSIONERS AND COMMISSIONERS COURT.—Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. The present county courts shall make the first division. Subsequent divisions shall be made by the commissioners' court provided for by this Constitution. In each such precinct there shall be elected at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8000 or more inhabitants, there shall be elected two justices of the peace. Each county shall in like manner be divided into four commissioners' precincts in each of which there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years and until his successor shall be elected and qualified. The county commissioners so chosen, with the county judge, as presiding officer, shall compose the county commissioners court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of this State, or as may be hereafter prescribed.

SEC. 19. CRIMINAL JURISDICTION OF JUSTICES OF THE PEACE; APPEALS; JUSTICES OF THE PEACE EX-OFFICIO NOTARIES.—Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the county courts shall be allowed in all cases decided in justices' courts where the judgment is for more than twenty dollars exclusive of costs; and in all criminal cases under such regulations as may be prescribed by law. And the justices of the peace shall be *exofficio*

notaries public and they shall hold their courts at such times and places as may be provided by law.

Sec. 20. County Clerk; Election; Term; Duties; Vacancies.—There shall be elected for each county, by the qualified voters, a county clerk, who shall hold his office for two years, who shall be clerk of the county and commissioners' courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the commissioners' court until the next general election for county and State officers; provided, that in counties having a population of less than eight thousand persons there may be an election of a single clerk, who shall perform the duties of district and county clerks.

Sec. 21. County and District Attorneys; Duties; Vacancies; Fees.—A county attorney, for counties in which there is not a resident criminal district attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of two years. In case of vacancy the commissioners' court of the county shall have power to appoint a county attorney until the next general election. The county attorneys shall represent the State in all cases in the district and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of district attorneys in such districts, as may be deemed necessary, and make provision for the compensation of district attorneys, and county attorneys; provided, district attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. County attorneys shall receive as compensation only such fees, commissions and perquisites as may be prescribed by law.

Sec. 22. Jurisdiction of Courts May Be Changed by Legislature.—The Legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of county courts; and in cases of any such change of jurisdiction, the Legislature shall also conform the jurisdiction of the other courts to such change.

SEC. 23. SHERIFF; TERM OF OFFICE; VACANCY.—There shall be elected by the qualified voters of each county a sheriff, who shall hold his office for the term of two years, whose duties, and perquisites, and fees of office, shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the commissioners' court until the next general election for county or State officers.

SEC. 24. CERTAIN OFFICERS REMOVED BY DISTRICT COURTS FOR DRUNKENNESS, INCOMPETENCY, OFFICIAL MISCONDUCT, ETC.—County judges, county attorneys, clerks of the district and county courts, justices of the peace, constables, and other county officers, may be removed by the judges of the district courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury.

SECTION 25. SUPREME COURT TO REGULATE PRACTICE.—The Supreme Court shall have power to make and establish rules of procedure not inconsistent with the laws of the State for the government of said Court and the other Courts of this State to expedite the dispatch of business therein.

SEC. 26. NO APPEAL IN CRIMINAL CASES BY THE STATE.—The State shall have no right of appeal in criminal cases.

SEC. 27. TRANSFER OF CASES BY THE LEGISLATURE.—The Legislature shall, at its first session, provide for the transfer of all business, civil and criminal, pending in district courts, over which jurisdiction is given by this Constitution to the county courts, or other inferior courts, to such county or inferior courts, and for the trial or disposition of all such causes by such county or other inferior courts.

SEC. 28. VACANCIES IN OFFICES OF JUDGES OF SUPERIOR COURTS TO BE FILLED BY THE GOVERNOR.—Vacancies in the office of judges of the Supreme Court, the Court of Criminal appeals, the Court of Civil appeals and the district Courts shall be filled by the Governor until the next succeeding general election; and vacancies in the office of County Judge and justices of the peace shall be filled by the Commissioners Court until the next general election for such offices.

SECTION 29. TERMS OF COUNTY COURTS; PROBATE BUISNESS; PROSECUTIONS.—The County Court shall hold at least four terms

for both civil and criminal business annually as may be provided by the Legislature or by the Commissioners Court of the County under authority of law and such other terms each year as may be fixed by the Commissioners Court; provided, the Commissioners Court of any County having fixed the times and number of terms of the County Court shall not change the same again until the expiration of one year. Said Court shall dispose of probate business either in term time or vacation under such regulation as may be prescribed by law. Prosecutions may be commenced in said Courts in such manner as is or may be provided by law, and a Jury therein shall consist of six men. Until otherwise provided the terms of the County Court shall be held on the first mondays in February, May, August and November and may remain in session three weeks.

## ARTICLE VI.

### SUFFRAGE.

SECTION 1. PERSONS WHO CANNOT VOTE.—The following classes of persons shall not be allowed to vote in this State, towit:

First: Persons under twenty-one (21) years of age.

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislatures may make.

Fifth: All soldiers, marines and seamen, employed in the service of the Army or Navy of the United States. Provided that this restriction shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers and retired enlisted men of the United States Army, Navy, and Marine Corps.

SECTION 2. POLL TAX PAYMENT REQUIRED OF VOTERS.—Every person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this State one year next preceding an election and the last six months within

the district or county in which such person offers to vote, shall be deemed a qualified elector; provided, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes; and provided further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation.

Sec. 3. Electors in Towns and Cities; Only Property Taxpayers to Vote in Certain Instances.—All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; *provided,* that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

Sec. 3a. When an election is held by any county, or any number of counties, or any political sub-division of the State, or any political sub-division of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political sub-division, district, city, town or village where such election is held, and who have duly rendered the same for

taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence.

SECTION 4. ELECTION BY BALLOT; REGISTRATION IN CITIES OF 10,000 INHABITANTS OR MORE.—In all elections by the people the vote shall be by ballot and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box and the Legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more.

SEC. 5. VOTERS PRIVILEGED FROM ARREST.—Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

## ARTICLE VII.

### EDUCATION—THE PUBLIC FREE SCHOOLS.

SEC. 1. PUBLIC SCHOOLS TO BE ESTABLISHED.—A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

SEC. 2. PROVISIONS GOVERNING THE LEVY AND COLLECTION OF TAXES FOR THE SUPPORT OF THE PUBLIC FREE SCHOOLS.—All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature whatsoever; onehalf of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.

SECTION 3. SCHOOL TAXES.—One-fourth of the revenue derived from the State Occupation taxes and poll tax of one dollar on every inhabitant of the States, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected

an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred ($100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free textbooks for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school districts by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property tax-paying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one (1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law.

Sec. 3a. County Line Districts; Validation; Bonds; Taxation.—Every school district heretofore formed, whether formed under the general law or by special act, and whether the territory embraced within its boundaries lies wholly within a single county or partly in two or more counties, is hereby declared to be, and from its formation to have been, a valid and lawful district.

All bonds heretofore issued by any such districts which have been approved by the Attorney General and registered by the Comptroller are hereby declared to be, and at the time of their issuance

to have been, issued in conformity with the Constitution and laws of this State, and any and all such bonds are hereby in all things validated and declared to be valid and binding obligations upon the district or districts issuing the same.

Each such district is hereby authorized to, and shall annually levy and collect an ad valorem tax sufficient to pay the interest on all such bonds and to provide a sinking fund sufficient to redeem the same at maturity, not to exceed such a rate as may be provided by law under other provisions of this Constitution.

And all trustees heretofore elected in districts made up from more than one county are hereby declared to have been duly elected, and shall be and are hereby named as trustees of their respective districts, with power to levy the taxes herein authorized until their successor shall be duly elected and qualified as is or may be provided by law.

Section 4. Sale of School Lands; No Release to Purchasers; the Investment of Proceeds.—The lands herein set apart to the Public Free School fund, shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The Comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments.

Sec. 5. Permanent School Fund; Interest; Alienation; Sectarian Schools.—The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the Legislature may add not exceeding one per cent annually of the total value of the permanent school funds, such value to be ascertained by the Board of Education until otherwise provided by law, and the available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever: nor shall the same, or any part thereof ever be appropriated to or used for the support of any

sectarian school: and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law.

SECTION 6. COUNTY SCHOOL LANDS; LIMITATIONS; SETTLERS; PROCEEDS.—All lands heretofore, or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county. Actual settlers residing on said land, shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund.

SEC. 6a. All agriculture or grazing school land mentioned in Section 6 of this Article owned by any county shall be subject to taxation except for State purposes to the same extent as lands privately owned.

SECTION 7. SCHOOLS FOR WHITE AND COLORED.—Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

SEC. 8. BOARD OF EDUCATION.—The Legislature shall provide by law for a State Board of Education, whose members shall be appointed or elected in such manner and by such authority and shall serve for such terms as the Legislature shall prescribe not to exceed six years. The said board shall perform such duties as may be prescribed by law.

## ASYLUMS.

SECTION 9. LANDS OF ASYLUMS; SALE.—All lands heretofore granted for the benefit of the Lunatic, Blind, Deaf and Dumb, and Orphan Asylums, together with such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said Asylum. And the Legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in sec. 4 of this Article.

## UNIVERSITY.

SEC. 10. UNIVERSITY LANDS AND FUNDS.—The Legislature shall as soon as practicable establish, organize and provide for the maintenance, support and direction of a University of the first class, to be located by a vote of the people of this State, and styled, "The University of Texas", for the promotion of literature, and the arts and sciences, including an Agricultural, and Mechanical department.

SECTION 11. FUNDS OF UNIVERSITY, HOW INVESTED.—In order to enable the Legislature to perform the duties set forth in the foregoing Section, it is hereby declared all lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas, together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, except donations limited to specific purposes, shall constitute and become a Permanent University Fund. And the same as realized and received into the Treasury of the State (together with such sums belonging to the Fund, as may now be in the Treasury), shall be invested in bonds of the United States, the State of Texas, or counties of said State, or in School Bonds of municipalities, or in bonds of any city of this State, or in bonds issued under and by virtue of the Federal Farm Loan Act approved by the President of the United States, July 17, 1916, and amendments thereto; and the interest accruing thereon shall be subject to appropriation by the Legislature to accomplish the purpose declared in the foregoing

Section; provided that the one-tenth of the alternate Sections of the lands granted to railroads, reserved by the State, which were set apart and appropriated to the establishment of the University of Texas, by an Act of the Legislature of February 11, 1858, entitled, "An Act to establish the University of Texas," shall not be included in, or constitute a part of, the Permanent University Fund.

Sec. 12. Lands to Be Sold; Relief of Purchasers.—The land herein set apart to the University fund shall be sold under such regulations, at such times, and on such terms as may be provided by law; and the Legislature shall provide for the prompt collection, at maturity, of all debts due on account of University lands, heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

Sec. 13. Agricultural and Mechanical College; Appropriations.—The Agricultural and Mechanical College of Texas, established by an Act of the Legislature passed April 17th 1871, located in the county of Brazos, is hereby made, and constituted a Branch of the University of Texas, for instruction in Agriculture, the Mechanic Arts, and the Natural Sciences connected therewith, And the Legislature shall at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said College in immediate and successful operation.

Sec. 14. Branch University for Colored.—The Legislature shall also when deemed practicable, establish and provide for the maintenance of a College or Branch University for the instruction of the colored Youths of the State, to be located by a vote of the people; Provided, that no tax shall be levied, and no money appropriated, out of the general revenue, either for this purpose or for the establishment, and erection of the buildings of the University of Texas.

Sec. 15. Land Appropriated for Universities to Be Sold.—In addition to the lands heretofore granted to the University of Texas, there is hereby set apart, and appropriated, for the endowment maintenance, and support of said University and its branches, one million acres of the unappropriated public domain of the State, to be designated, and surveyed as may be provided by law; and said

lands shall be sold under the same regulations, and the proceeds invested in the same manner, as is provided for the sale and investment of the permanent University Fund; and the Legislature shall not have power to grant any relief to the purchasers of said lands.

SEC. 16. LEGISLATURE TO FIX TERMS OF OFFICERS OF PUBLIC SCHOOL SYSTEM.—The Legislature shall fix by law the terms of all offices of the public school system and of the State institutions of higher education, inclusive, and the terms of members of the respective boards, not to exceed six years.

SECTION 16.[1] All lands mentioned in Sections 11, 12 and 15 of Article VII, of the Constitution of the State of Texas, now belonging to the University of Texas shall be subject to taxation for county purposes to the same extent as lands privately owned; provided they shall be rendered for taxation upon values fixed by the State Tax Board; and providing that the State shall remit annually to each of the counties in which said lands are located an amount equal to the tax imposed upon said land for county purposes.

## ARTICLE VIII.

### TAXATION AND REVENUE.

SEC. 1. TAXATION TO BE EQUAL AND UNIFORM; OCCUPATION AND INCOME TAXES; EXEMPTIONS; LIMITATIONS UPON COUNTIES, CITIES, ETC.—Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; *Provided,* that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State, shall be exempt from taxation, and provided further that the occupation

[1] Two sections are numbered 16. "Both were adopted as such and no one has authority to change the section numbers."

tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one-half of the tax levied by the State for the same period on such profession or business.

SECTION 1-a: Three Thousand Dollars ($3,000.00) of the assessed taxable value of all residence homesteads as now defined by law shall be exempt from all taxation for all State purposes; provided that this exemption shall not be applicable to that portion of the State ad valorem taxes levied for State purposes remitted within those counties or other political subdivisions now receiving any remission of State taxes, until the expiration of such period of remission, unless before the expiration of such period the board or governing body of any one or more of such counties or political subdivisions shall have certified to the State Comptroller that the need for such remission of taxes has ceased to exist in such county or political subdivision; then this Section shall become applicable to each county or political subdivision as and when it shall become within the provisions hereof.

SEC. 2. OCCUPATION TAXES; EXEMPTIONS.—All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under

foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void.

Sec. 3. Taxes to Be Collected for Public Purposes Only. —Taxes shall be levied and collected by general laws and for public purposes only.

Sec. 4. Power to Tax Corporations Not to Be Surrendered. —The power to tax corporations and corporate property shall not be surrendered or suspended by act of the Legislature, by any contract or grant to which the State shall be a party.

Sec. 5. Railroad Taxes Due Cities and Towns.—All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation, and if any such property shall not have been heretofore rendered, the authorities of the city or town within which it lies, shall have power to require its rendition, and collect the usual municipal tax thereon, as on other property lying within said municipality.

Sec. 6. Appropriations; How Made and for What Period. —No money shall be drawn from the Treasury, but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assemblage of the sixteenth Legislature.

Sec. 7. Special Funds Not to Be Borrowed or Diverted.— The Legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may, or ought to, come into the Treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose any special fund, or any part thereof.

Sec. 8. Railroad Property; How Assessed.—All property of Railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the prin-

cipal office of the company is located, and the county tax paid upon it, shall be apportioned by the Comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.

SEC. 9. RATE OF STATE AND MUNICIPAL TAXATION.—The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25, A. D. 1883; and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided that a majority of the qualified property tax paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws.

In addition to the foregoing, cities of more than five thousand inhabitants may lay out within their corporate limits, improvement districts in which they, by and with the consent of a majority of the tax payers owning real estate therein may build side walks and charge the cost thereof against the abutting property, and may build sewers and pave streets and charge one third of the cost thereof against the abutting property on either side of the streets upon which such improvements are made in such district, and the amount charged against all such abutting property shall be deemed and held to be a tax against and a lien upon such abutting property, and the Legislature is required to enact laws, prescribing the means for ascertaining the amount properly chargeable against each parcel

of abutting property and providing for the enforcement of its collection.

SEC. 10. TAXES NOT TO BE RELEASED EXCEPT BY TWO-THIRDS VOTE OF EACH HOUSE.—The Legislature shall have no power to release the inhabitants of, or property in, any county, city or town from the payment of taxes levied for State or County purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each House of the Legislature.

SEC. 11. WHERE PROPERTY IS TO BE ASSESSED.—All property, whether owned by persons or corporations shall be assessed for taxation, and the taxes paid in the county where situated, but the Legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

SEC. 12. UNORGANIZED COUNTIES.—All property subject to taxation in, and owned by residents of unorganized counties, shall be assessed and the taxes thereon paid in the counties, to which such unorganized counties shall be attached for judicial purposes; and lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties shall be assessed and the taxes thereon collected at the office of the Comptroller of the State.

SEC. 13. TAX SALES; TAX DEEDS; REDEMPTIONS.—Provision shall be made by the first Legislature for the speedy sale of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale of all lands and other property, upon which the taxes have not been paid, and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; *provided* that the former owner shall, within two years from date of purchaser's deed, have the right to redeem the land upon the payment of double the amount of money paid for the land.[1]

[1] An amendment to this section was submitted to the voters in November, 1932. The Election Board was enjoined from counting the votes and the result has not been proclaimed. For the text of the proposed amendment, see *General Laws,* 42d Leg., reg. sess., 918-919 (1931).

SECTION 14. There shall be elected by the qualified electors of each county at the same time and under the same law regulating the election of State and County officers, an Assessor and Collector of Taxes, who shall hold his office, for two (2) years and until his successor is elected and qualified; and such Assessor and Collector of Taxes shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes as may be prescribed by the Legislature.

SEC. 15. TAX LIENS AND SALES.—The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

SECTION 16. The sheriff of each county in addition to his other duties shall be the Assessor and Collector of Taxes therefor; but, in counties having ten thousand (10,000) or more inhabitants, to be determined by the last preceding census of the United States, an Assessor and Collector of Taxes shall be elected to hold office for two (2) years and until his successor shall be elected and qualified.

SEC. 17. POWER OF LEGISLATURE AS TO TAXES.—The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed in such manner as may be, consistent with the principles of taxation fixed in this Constitution.

SEC. 18. EQUALIZATION OF TAXES.—The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, (The County Commissioners' Court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

SECTION 19. FARM PRODUCTS IN THE HANDS OF THE PRODUCER EXEMPT FROM ALL TAXATION.—Farm products in the hands of the producer, and family supplies for home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both houses of the Legislature.

# ARTICLE IX.

## COUNTIES.

SEC. 1. CREATION AND ORGANIZATION OF COUNTIES; CHANGING OF COUNTY LINES.—The Legislature shall have power to create counties for the convenience of the people subject to the following provisions:

First: In the territory of the State exterior to all counties now existing, no new counties shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the State lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

Second. Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles, nor shall any such county now existing be reduced to a less area than seven hundred square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may in whole or in part be taken. Counties of a less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each House of the Legislature, taken by yeas and nays and entered on the journals. Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote. When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing, of the county from which it was taken, in such manner as may be prescribed by law.

Third. No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

## COUNTY SEATS.

SEC. 2. HOW COUNTY SEATS ARE CREATED AND CHANGED.—The Legislature shall pass laws regulating the manner of removing county seats, but no county seat situated within five miles of the geographical centre of the county shall be removed, except by a vote of two-thirds of all the electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from the geographical centre of the county to a point within five miles of such centre, in either case the centre to be determined by a certificate from the Commissioner of the General Land Office.

SECTION 3. (1) Holding the belief that the highest degree of local self-government which is consistent with the efficient conduct of those affiairs by necessity lodged in the Nation and the State will prove most responsive to the will of the people, and result to reward their diligence and intelligence by greater economy and efficiency in their local governmental affairs, it hereby is ordained:

(2) Any county having a population of sixty-two thousand (62,000) or more according to the then last Federal Census may adopt a County Home Rule Charter, to embrace those powers appropriate hereto, within the specific limitations hereinafter provided. It further is provided that the Legislature, by a favoring vote of two-thirds of the total membership of both the Senate and the House of Representatives, may authorize any county, having a population less than that above specified, to proceed hereunder for the adoption of a Charter; however, as a condition for such authorization, it is required that notice of the intent to seek Legislative authority hereunder must be published in one or more newspapers, to give general circulation in the county affected, not less than once per week for four (4) consecutive weeks, and the first of such publications shall appear not less than thirty (30) days next prior to the time an Act making proposal hereunder may be introduced in the Legislature. No County Home Rule Charter may be adopted by any county save upon a favoring vote of the resident qualified electors of the affected county. In elections submitting to the voters a proposal to adopt a Charter (unless otherwise provided by a two-thirds vote of the total membership of each House of the Legislature) the votes cast by the qualified electors residing within the limits of all the incorporated cities and towns of the

county shall be separately kept but collectively counted and the votes of the qualified electors of the county who do not reside within the limits of any incorporated city or town likewise shall be separately kept and separately counted, and unless there be a favoring majority of the votes cast within and a favoring majority of the votes cast without such collective cities and towns, the Charter shall not be adopted. It is expressly forbidden that any such Charter may inconsonantly affect the operation of the General Laws of the State relating to the judicial, tax, fiscal, educational, police, highway and health systems, or any other department of the State's superior government. Nothing herein contained shall be deemed to authorize the adoption of a Charter provision inimicable to or inconsistent with the sovereignty and established public policies of this State, and no provision having such vice shall have validity as against the State. No Charter provision may operate to impair the exemption of homesteads as established by this Constitution and the Statutes relating thereto.

(3) a. A Charter hereunder may provide: The continuance of a County Commissioners' Court, as now constituted, to serve as the governing body of a county to operate hereunder; or, may provide for a governing body otherwise constituted, which shall be elective, and service therein shall be upon such qualifications, for such terms, under such plan of representation, and upon such conditions of tenure and compensation as may be fixed by any such Charter. The terms for service in such governing body may exceed two (2) years, but shall not exceed six (6) years. In any event, in addition to the powers and duties provided by any such Charter, such governing body shall exercise all powers, and discharge all duties which, in the absence of the provisions hereof, would devolve by law on County Commissioners and County Commissioners' Courts. Further, any such Charter may provide for the organization, reorganization, establishment and administration of the government of the county, including the control and regulation of the performance of and the compensation for all duties required in the conduct of the county affairs, subject to the limitations herein provided.

b. A Charter hereunder may provide that Judges of County Courts (including that County Court designated in this Constitution), and Justices of the Peace be compensated upon a salary basis in lieu of fees. The jurisdiction of the County Court designated in this Constitution, and the duties of the Judges thereof, may be confined to that general jurisdiction of a probate Court which else-

where is defined in this Constitution. The office of Justice of the Peace may be made either elective or appointive. Other than as herein provided, no such Charter shall provide for altering the jurisdiction or procedure of any Court. The duties of District Attorney and/or County Attorney may be confined to representing the State in civil cases to which the State is a party and to enforcement of the State's Penal Code, and the compensation of said attorneys may be fixed on a salary basis in lieu of fees.

c. Save as herein above and hereinafter otherwise provided, such Charters, within the limits expressed therein, may invest the governing body to be established for any county electing to operate hereunder with the power to create, consolidate or abolish any office or department, whether created by other provisions of the Constitutions or by statute, define the duties thereof, fix the compensation for service therein, make the same elective or appointive and prescribe the time, qualifications and conditions for tenure in any such office; save, that no such Charter, other than as hereinbefore authorized, shall provide to regulate the status, service, duties or compensation of members of the Legislature, Judges of the Courts, District Attorneys, County Attorneys, or any office whatever by the law of the State required to be filled by an election embracing more than one county. Excepting herefrom nominations, elections or appointments to offices, the terms whereof may not have expired prior to the adoption of this Amendment to the Constitution, at such time as a Charter provision adopted hereunder may be in effect (save as to those offices which must continue to be elective, as herein elsewhere specified), all terms of county officers and all contracts for the giving of service by deputies under such officers, may be subject to termination by the administrative body of the county, under an adopted Charter so providing, and there shall be no liability by reason thereof.

d. Any county electing to operate hereunder shall have the power, by Charter provision, to levy, assess and collect taxes, and to fix the maximum rate for ad valorem taxes to be levied for specific purpose, in accordance with the Constitution and laws of this State, provided, however, that the limit of the aggregate taxes which may be levied, assessed and collected hereunder shall not exceed the limit or total fixed, or hereafter to be fixed, by this Constitution to control counties, and the annual assessment upon property, both real, personal and mixed, shall be a first superior and prior lien thereon.

e. In addition to the powers herein provided, and in addition to

powers included in County Home Rule Charters, any county may, by a majority vote of the qualified electors of said county, amend its Charter to include other powers, functions, duties and rights which now or hereafter may be provided by this Constitution and the statutes of the State for counties.

(4). Any county operating hereunder shall have the power to borrow money for all purposes lawful under its Charter, to include the refunding of a lawful debt, in a manner conforming to the General Laws of the State, and may issue therefor its obligations. Such obligations, other than those to refund a lawful debt, shall not be valid unless authorized by a majority of all votes cast by those resident qualified votes of the area affected by the taxes required to retire such obligations, who may vote thereon. In case of county obligations, maturing after a period of five (5) years, the same shall be issued to mature serially, fixing the first maturity of principal at a time not to exceed two (2) years next after the date of the issuance of such obligations. Such obligations may pledge the full faith and credit of the county; but in no event shall the aggregate obligations so issued, in principal amount outstanding at any one time, exceed the then existing Constitutional limits for such obligations and such indebtedness and its supporting tax shall constitute a first and superior lien upon the property taxable in such county. No obligation issued hereunder shall be valid unless prior to the time of the issuance thereof there be levied a tax sufficient to retire the same as it matures, which tax shall not exceed the then existing Constitutional limits.

(5). Such Charter may authorize the governing body of a county operating hereunder to prescribe the schedule of fees to be charged by the officers of the county for specified service, to be in lieu of the schedule for such fees prescribed by the General Laws of the State; and, to appropriate such fees to such funds as the Charter may prescribe; provided, however, no fee for a specified service shall exceed in amount the fee fixed by General Law for that same service. Such Charters as to all judicial officers, other than District Judges, may prescribe the qualifications for services, provided the standards therefor be not lower than those fixed by the General Laws of the State.

(6) a. Subject to the express limitations upon the exercise of the powers by this subdivision to be authorized, such Charters may provide (or omit to provide) that the governmental and/or proprietary functions of any city, town, district or other defined po-

litical subdivision (which is a governmental agency and embraced within the boundaries of the county) be transferred, either as to some or all of the functions thereof, and yielded to the control of the administrative body of the county. No such transfer or yielding of functions may be effected, unless the proposal is submitted to a vote of the people, and, unless otherwise provided by a two-thirds vote of the total membership of each House of the Legislature, such a proposal shall be submitted as a separate issue, and the vote within and without any such city, town, district, or other defined governmental entity, shall be separately cast and counted, and unless two-thirds of the qualified votes cast within the yielding defined governmental entity, and a majority of the qualified votes cast in the remainder of the county, favor the proposed merger, it shall not be effected. In case of the mergers hereby authorized, without express Charter provision therefor, in so far as may be required to make effective the object of the proposed merger, the county shall succeed to all the appropriate lawful powers, duties, rights, procedures, restrictions and limitations which prior to the merger were reposed in, or imposed upon, the yielding governmental agency. Particularly, it is provided that the power to create funded indebtedness and to levy taxes in support thereof may be exercised only by such procedures, and within such limits, as now are, or hereafter may be, provided by law to control such appropriate other governmental agencies were they to be independently administered. Such mergers may be effected under proposed contracts between the county and any such yielding governmental agency, to be approved at an election as hereinbefore provided for. In order to increase governmental efficiency and effect economy the county may contract with the principal city of the county to perform one or more of its functions, provided such contracts shall not be valid for more than two (2) years.

b. In case of the partial or complete merger of the government of a city operating under a Home Rule Charter, with the government of a county operating hereunder, those city Charter provisions affected thereby shall cease to control, and the county Charter provisions shall control.

c. When any embraced incorporated city or town elects to merge its governmental functions with those of the county under the provisions hereof, such Charter may provide for defining or redefining the boundaries of such cities and towns, provided, however, that in defining or redefining the boundaries of such cities and towns,

such boundaries may be extended only to include those areas contiguous to such cities as are urban in character; and as to such cities or towns and for the benefit thereof the county, in addition to the primary city and county tax herein authorized and any other lawful district tax, may levy and collect taxes upon the property taxable within such city or town as defined or redefined, within the limits authorized by Sections 4 and 5 of Article XI of this Constitution, (or any Amendment thereof) for incorporated cities according to the population, provided that no tax greater than that existing at the time of such merger or for any added purpose shall be imposed upon any such city or town unless authorized by a majority of all votes cast by the resident qualified voters of such city or town.

d. Areas urban in character though not incorporated, under appropriate Charter provision may be defined as such by the governing body of the county, provided, however, that no portion of the county shall be defined as an urban area unless it has sufficient population to entitle it to incorporate under the then existing laws of the State; and no such urban area, when created, shall be vested with any taxing or bonding power which it would not possess if it were operating as a separate incorporated unit under the then existing Constitutional and Statutory provisions of this State; and provided further that the governing body of the county for the government of such areas shall have and exercise all powers and authority granted by law to the governing bodies of similar areas when separately incorporated as a city or town, and such areas shall be subject to additional taxation within the same Constitutional limits as control taxation for a city or a town of like population. Likewise such Charter may provide for the governing board of the county subject to existing Constitutional and statutory provisions to define, create and administer districts, and have and exercise the powers and authority granted by the Constitution and laws relative to the same.

(7). No provision of this Constitution inconsonant with the provisions of this Section 3, of Article IX, shall be held to control the provisions of a Charter adopted hereunder, and conforming herewith. Charters adopted hereunder shall make appropriate provision for the abandonment, revocation, and amendment thereof, subject only to the requirements that there must be a favoring majority of the vote cast upon such a proposal, by the qualified resident electors of the county; and, no Charter may forbid amendments thereof

for a time greater than two (2) years. The provisions hereof shall be self-executing, subject only to the duty of the Legislature to pass all laws (consistent herewith) which may be necessary to carry out the intent and purpose hereof. Further, the Legislature shall prescribe a procedure for submitting to decision, by a majority vote of the electors voting thereon, proposed alternate and elective charter provisions.

## ARTICLE X.

### RAIL ROADS.

SEC. 1. RAILROADS CONNECTING AT STATE LINES; CROSSING; CONTINUOUS LINES.—Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every Railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

SECTION 2. PUBLIC HIGHWAYS; COMMON CARRIERS; DUTY OF THE LEGISLATURE; FIXING RATES.—Railroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways, and railroad companies, common carriers. The Legislature shall pass laws to regulate railroad, freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.

SEC. 3. RAILROADS TO KEEP PUBLIC OFFICE IN STATE; DIRECTORS; ANNUAL REPORT.—Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made and where shall be kept for inspection by the stockholders of such corporations, books, in which shall be recorded

the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and the President or Superintendent shall report annually, under oath, to the Comptroller or Governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this Section.

Sec. 4. Rolling Stock for Railroad Property Not Exempt From Execution.—The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the Legislature shall pass no laws exempting any such property from execution and sale.

Sec. 5. Railroads Shall Not Consolidate With Competing Lines.—No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation, with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

Sec. 6. No Railroad Shall Consolidate With a Foreign Road.—No railroad company organized under the laws of this State, shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States.

Sec. 7. No Street or Public Highway Shall Be Used for the Construction of Street Railways Without the Consent of the Local Authorities Having Control of the Street or Highway.—No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city,

town, or village or upon any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

SEC. 8. CONDITIONS UPON WHICH RAILROAD CORPORATIONS MAY RECEIVE THE BENEFIT OF FUTURE LEGISLATION.—No railroad corporation in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

SEC. 9. UNDER CERTAIN CONDITIONS RAILROADS MUST BE CONSTRUCTED THROUGH COUNTY SEATS.—No railroad hereafter constructed in this State, shall pass within a distance of three miles of any county seat, without passing through the same, and establishing and maintaining a depot therein unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

## ARTICLE XI.

### MUNICIPAL CORPORATIONS.

SEC. 1. COUNTIES ARE LEGAL SUBDIVISIONS OF THE STATE.—The several Counties of this State are hereby recognized as legal subdivisions of the State.

SEC. 2. PUBLIC BUILDINGS AND ROADS.—The construction of Jails, Court-houses and Bridges and the establishment of County Poor Houses and Farms, and the laying out, construction and repairing of County Roads shall be provided for by general laws.

SEC. 3. NO COUNTY OR MUNICIPAL CORPORATION SHALL BECOME A SUBSCRIBER TO THE CAPITAL STOCK OF ANY PRIVATE CORPORATION OR MAKE ANY DONATION TO THE SAME.—No County, City, or other Municipal Corporation shall hereafter become a subscriber to the capital of any Private Corporation or Association, or make any appropriation or donation to the same, or in any wise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law.

SEC. 4. CITIES AND TOWNS HAVING A POPULATION OF LESS THAN 5000 INHABITANTS TO BE CHARTERED BY GENERAL LAWS; DUES TO BE COLLECTED IN CURRENT MONEY.—Cities and towns having a population of five thousand or less may be chartered alone by general law. They may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful for any one year which shall exceed one and one-half per cent of the taxable property of such city; and all taxes shall be collectible only in current money, and all licenses and occupation taxes levied, and all fines, forfeitures and penalties accruing to said cities and towns shall be collectible only in current money.

SEC. 5. CITIES OF MORE THAN 5000 INHABITANTS MAY BY A MAJORITY VOTE OF THE QUALIFIED VOTERS ADOPT THEIR OWN CHARTER; LIMITATION AS TO TAXATION AND DEBT.—Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent, of the taxable property of such city and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years.

SEC. 6. MUNICIPAL TAXATION.—Counties cities and towns are authorized in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall when levied specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons bonds or other indebtedness for the payment of which such tax may have been levied.

Sec. 7. Taxation of Seawalls, Etc.; Restrictions and Limitations; Eminent Domain.—All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of a two-thirds majority of the resident property taxpayers voting thereon at an election called for such purpose to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for.

Sec. 8. State Aid for Seawalls, Etc.—The Counties and Cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, The Legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of Sea Walls, or Breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed, in any locality.

Sec. 9. Public Buildings, Etc.—The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, Fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, provided, nothing herein shall prevent the enforcement of the vendors lien, the mechanics or builders lien, or other liens now existing.

Sec. 10. City or Town May Be School District; Special Tax.—The Legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter, authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if at an election, held for that purpose, two thirds of the taxpayers of such city or town shall vote for such tax.

## ARTICLE XII.

### PRIVATE CORPORATIONS.

SEC. 1. CORPORATIONS CREATED BY GENERAL LAWS.—No Private Corporations shall be created except by general laws.

SEC. 2. GENERAL LAWS TO BE ENACTED.—General laws shall be enacted providing for the creation of Private Corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

SEC. 3. FRANCHISE TO BE UNDER LEGISLATIVE CONTROL.—The right to authorize and regulate freights, tolls, wharfage or fares levied and collected or proposed to be levied and collected by individuals, companies or corporations for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under Legislative control and depend upon Legislative authority.

SEC. 4. CHARGES AND COLLECTIONS OF FREIGHTS, WHARFAGE, FARES OR TOLLS FOR THE USE OF PROPERTY DEVOTED TO THE PUBLIC PROHIBITED EXCEPT SPECIALLY AUTHORIZED BY LAW.—The first Legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the Attorney General and District or County Attorneys in the name and behalf of the State to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares, or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

SECTION 5. FREIGHTS, WHARFAGE, FARES OR TOLLS SUBJECT TO LEGISLATIVE CONTROL.—All laws granting the right to demand and collect freights, fares, tolls or wharfage shall at all times be subject to amendment, modification or repeal by the Legislature.

SEC. 6. THE ISSUANCE OF STOCKS AND BONDS BY CORPORATIONS PROHIBITED EXCEPT FOR MONEY PAID AND LABOR DONE, ETC.—No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void.

SEC. 7. VESTED RIGHTS PROTECTED.—Nothing in this Article shall be construed to divest or affect, rights guaranteed by any existing grant or statute, of this State, or of the Republic of Texas.

## ARTICLE XIII.

### SPANISH AND MEXICAN LAND TITLES.

SEC. 1. FINES, PENALTIES AND ESCHEAT.—All fines, penalties, forfeitures and escheats, which have heretofore accrued to the Republic and State of Texas, under their constitutions and laws, shall accrue to the State under this Constitution; and the Legislature shall provide a method for determining what lands have been forfeited, and for giving effect to escheats; and all such rights of forfeiture and escheats to the State shall, *ipso facto,* inure to the protection of the innocent holders of junior titles, as provided in sections two, three and four of this Article.

SEC. 2. LANDS NOT RECORDED, ARCHIVED OR IN POSSESSION.—Any claim of title or right to land in Texas, issued prior to the 13th day of November, 1835, not duly recorded in the county where the land was situated at the time of such record, or not duly archived in the General Land Office; or not in the actual possession of the grantee thereof, or some person claiming under him, prior to the accruing of junior title thereto from the sovereignty of the soil, under circumstances reasonably calculated to give notice to said junior grantee, has never had, and shall not have, standing or effect against such junior title, or color of title, acquired without such or actual notice of such prior claim of title or right; and no condition annexed to such grants, not archived, or recorded, or occupied, as aforesaid, has been, or ever *shall* be released or waived, but actual performance of all such conditions shall be proved by the person or persons claiming under such title or claim of right in order to maintain action thereon, and the holder of such junior title, or color of title, shall have all the rights of the government which have heretofore existed, or now exist, arising from the non-performance of all such conditions.

SEC. 3. NON-PAYMENT OF TAXES; PRESUMPTIONS.—Non-payment of taxes on any claim of title to land, dated prior to the 13th day of November, 1835, not recorded, or archived, as provided in

Section 2, by the person or persons so claiming, or those under whom he or they so claim, from that date up to the date of the adoption of this Constitution, shall be held to be a presumption that the right thereto has reverted to the State, and that said claim is a stale demand, which presumption shall only be rebutted by payment of all taxes on said lands, State, County, and City, or Town, to be assessed on the fair value of such lands by the Comptroller, and paid to him, without commutation or deduction for any part of the above period.

Sec. 4. Titles Not to Be Recorded or Archived; Actual Possession; "Duly Recorded" Defined.—No claim of title or right to land, which issued prior to the thirteenth day of November, 1835, which has not been duly recorded in the county where the land was situated at the time of such record, or which has not been duly archived in the General Land Office, shall ever hereafter be deposited in the General Land Office, or recorded in this State, or delineated on the maps, or used as evidence in any of the courts of this State, and the same are stale claims; but this shall not affect such rights or presumptions as arise from actual possession. By the words "duly recorded" as used in Sections two and four of this Article, it is meant that such claim of title or right to land shall have been recorded in the proper office, and that mere errors in the certificate of registration; or informality, not affecting the fairness and good faith of the holder thereof, with which the record was made, shall not be held to vitiate such record.

Sec. 5. Certain Claims Declared Void.—All claims, locations, surveys, grants and titles, of any kind, which are declared null and void by the Constitution of the Republic or State of Texas, are, and the same shall remain forever null and void.

Sec. 6. Forgers of Land Titles.—The Legislature shall pass stringent laws for the detection and conviction of all forgers of land titles, and may make such appropriations of money for that purpose as may be necessary.

Sec. 7. Certain Sections Not a Repeal of Laws.—Sections two, three, four and five of this Article, shall not be so construed as to set aside or repeal any law or laws of the Republic or State of Texas, releasing the claimants of head-rights of colonists of a league of land, or less from compliance with the conditions on which their grants were made.

# ARTICLE XIV

## PUBLIC LANDS AND LAND OFFICE.

SEC. 1. GENERAL LAND OFFICE; GRANTS TO BE REGISTERED IN; LAND OFFICE TO BE SELF-SUSTAINING.—There shall be one General Land Office in the State, which shall be at the Seat of Government, where all Land Titles which have emanated or may hereafter emanate from the State shall be registered, except those titles the registration of which may be prohibited by this Constitution. It shall be the duty of the Legislature at the earliest practicable time to make the Land Office selfsustaining, and from time to time the Legislature may establish such subordinate Offices as may be deemed necessary.

SEC. 2. REVIVAL, SURVEY AND LOCATION OF GENUINE CERTIFICATES.—All unsatisfied genuine Land Certificates barred by Section four, Article ten, of the Constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the Land Office by the first day of January, 1875, are hereby revived. All unsatisfied genuine Land Certificates now in existence shall be surveyed and returned to the General Land Office within five years after the adoption of this Constitution, or be forever barred; and all genuine Land Certificates hereafter issued by the State shall be surveyed and returned to the General Land Office within five years after issuance, or be forever barred; Provided, that all genuine Land Certificates heretofore or hereafter issued shall be located, surveyed or patented, only upon vacant and unappropriated public domain and not upon any land titled or equitably owned under color of title from the sovereignty of the State, evidence of the appropriation of which is on the county records or in the General Land Office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

SEC. 3. GRANTS TO RAILWAYS.—The Legislature shall have no power to grant any of the lands of this State to any railway company except upon the following restrictions and conditions.

First That there shall never be granted to any such corporation more than sixteen sections to the mile, and no reservation of any part of the public domain for the purpose of satisfying such grant shall ever be made.

Second That no land certificate shall be issued to such company, until they have equipped, constructed and in running order at least ten miles of road, and on the failure of such company to comply with the terms of its charter, or to alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the State and become a portion of the public domain, and liable to location and survey. The Legislature shall pass general laws, only, to give effect to the provisions of this section.

Sec. 4. Sale of Lands to Actual Settlers.—No certificate for land shall be sold at the Land Office except to actual settlers upon the same, and in lots not to exceed one hundred and sixty acres.

Sec. 5. Alienation of Railroad Grants; Duty of Attorney General.—All lands heretofore or hereafter granted to railway companies where the charter or law of the State required or shall hereafter require their alienation within a certain period, on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters, and the laws under which the grants were made, are hereby declared forfeited to the State and subject to pre-emption, location and survey, as other vacant lands. All lands heretofore granted to said railroad companies to which no forfeiture was attached, on their failure to alienate, are not included in the foregoing clause, but in all such last named cases it shall be the duty of the Attorney General in every instance where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the State and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings in the county where the seat of government is situated to forfeit such lands to the State, and if such alienation be Judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the State and become a part of the vacant public domain, liable to pre-emption, location and survey.

Sec. 6. Grants to Heads of Families and Single Men.—To every head of a family without a homestead there shall be donated one hundred and sixty acres of Public Land, upon condition that he will select and locate said land, and occupy the same

three years and pay the Office fees due thereon. To all single men of eighteen years of age and upward shall be donated eighty acres of Public Land, upon the terms and conditions prescribed for heads of families.

SEC. 7. MINES AND MINERALS RELEASED TO OWNERS OF THE SOIL.—The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.

SEC. 8. TIME EXTENDED TO COMPLY WITH ACT OF 1870.—Persons residing between the Nueces river and the Rio Grande, and owning grants for lands which emanated from the government of Spain, or that of Mexico which grants have been recognized and validated by the State by acts of the Legislature, approved February 10th 1852. August 15th 1870, and other acts, and who have been prevented from complying with the requirements of said acts by the unsettled condition of the country, shall be allowed until the first day of January 1880, to complete their surveys, and the plots thereof, and to return their field notes to the General Land Office; and all claimants failing to do so shall be forever barred; provided, nothing in this section shall be so construed as to validate any titles not already valid, or to interfere with the rights of third persons.

## ARTICLE XV.

### IMPEACHMENT.

SEC. 1. POWER OF IMPEACHMENT VESTED IN THE HOUSE OF REPRESENTATIVES.—The power of impeachment shall be vested in the House of Representatives.

SEC. 2. TRIAL BY SENATE.—Impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate.

SEC. 3. OATH OF SENATORS.—When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present.

SEC. 4. JUDGMENT; PARTY CONVICTED SUBJECT TO INDICTMENT UNDER THE CRIMINAL LAWS.—Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor trust or profit under this State. A Party convicted on impeachment shall also be subject to indictment trial and punishment according to law.

SEC. 5. OFFICERS SUSPENDED DURING PENDING PROCEEDINGS. —All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment. The Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

SEC. 6. REMOVAL OF DISTRICT JUDGES.—Any Judge of the District Courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as Judge; or who shall fail to execute in a reasonable measure the business in his courts, may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths taken before some Judge of a court of record of not less than ten lawyers, practicing in the courts held by such Judge, and licensed to practice in the Supreme Court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of creditable witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

SEC. 7. TRIAL AND REMOVAL OF OTHER OFFICERS.—The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution.

## ADDRESS.

SEC. 8. REMOVAL OF JUDGES OF SUPREME COURT AND COURT OF APPEALS AND OF DISTRICT COURTS.—The Judges of the Supreme

Court, Court of Appeals and District Courts, shall be removed by the Governor on the address of two-thirds of each House of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment; provided however, that the cause or causes for which such removal, shall be required, shall be stated at length in such address and entered on the journals of each House; and provided further, that the cause or causes shall be notified to the Judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass, and in all such cases, the vote shall be taken by yeas and nays and entered on the journals of each House respectively.

## ARTICLE XVI.

### GENERAL PROVISIONS.

SEC. 1. OFFICIAL OATH.—Members of the Legislature, and all officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation: I, (----------) do solemnly swear, (or affirm), that I will faithfully and impartially discharge and perform all the duties incumbent upon me as --------, according to the best of my skill and ability, agreeably to the Constitution and laws of the United States and of this State; and I do further solemnly swear, (or affirm), that since the adoption of the Constitution of this State, I, being a citizen of this State, have not fought a duel with deadly weapons, within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, or aided, advised or assisted any person thus offending; And I furthermore solemnly swear, (or affirm), that I have not directly nor indirectly paid, offered or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected, (or if the office is one of appointment, to secure my appointment.) So help me God.

SEC. 2. RIGHT OF SUFFRAGE TO BE PROTECTED; CRIMINALS DISFRANCHISED.—Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who may have been

or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult, or other improper practice.

SEC. 3. FINES AND COSTS TO BE DISCHARGED BY MANUAL LABOR.—The Legislature shall make provision whereby persons convicted of misdemeanors and committed to the County jails in default of payment of fines and costs, shall be required to discharge such fines and costs by manual labor, under such regulations as may be prescribed by law.

SEC. 4. DUELING PROHIBITED.—Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly assist in any manner those thus offending, shall be deprived of the right of suffrage, or of holding any office of trust or profit under this State.

SEC. 5. BRIBERY IN ELECTIONS DISQUALIFICATION FOR HOLDING OFFICE.—Every person shall be disqualified from holding any office of profit, or trust, in this State, who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 6. APPROPRIATIONS FOR PRIVATE PURPOSES PROHIBITED; EXPENDITURES TO BE PUBLISHED.—No appropriation for private or individual purposes shall be made. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.

SEC. 7. NO PAPER TO CIRCULATE AS MONEY.—The Legislature shall, in no case, have power to issue "Treasury Warrants," Treasury Notes," or paper of any description intended to circulate as money.

SEC. 8. COUNTIES MAY PROVIDE WORKHOUSES, POORHOUSES AND FARMS.—Each County in the State may provide, in such manner as may be prescribed by law, a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

SEC. 9. ABSENCE ON BUSINESS OF THE STATE OR UNITED STATES SHALL NOT FORFEIT A RESIDENCE ONCE OBTAINED.—Absence on business of the State, or of the United States, shall not forfeit a residence once obtained, so as to deprive anyone of the right of suffrage, or of being elected or appointed to any office under the exceptions contained in this Constitution.

SEC. 10. DEDUCTIONS FROM SALARIES TO BE PROVIDED FOR.—The Legislature shall provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law.

SEC. 11. USURIOUS INTEREST PROHIBITED.—All contracts for a greater rate of interest than ten per centum per annum, shall be deemed usurious, and the first legislature after this amendment is adopted, shall provide appropriate pains and penalties to prevent the same; but when no rate of interest is agreed upon, the rate shall not exceed six per centum per annum.

SEC. 12. OFFICERS NOT ELIGIBLE.—No member of Congress, nor person holding or exercising any office of profit or trust, under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this State.

SEC. 13. LEGISLATURE SHALL PASS ARBITRATION LAWS.—It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial.

SEC. 14. RESIDENCE OF OFFICERS.—All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

SEC. 15. WIFE'S SEPARATE PROPERTY.—All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SECTION 16. BANKING CORPORATIONS.—The legislature shall by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

Each shareholder of such corporate body incorporated in this State, so long as he owns shares therein, and for twelve months after the date of any bona fide transfer thereof shall be personally liable for all debts of such corporate body existing at the date of such transfer, to an amount additional to the par value of such shares so owned or transferred, equal to the par value of such shares so owned or transferred.

No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid for in full in cash. Such body corporate shall not be authorized to engage in business at more than one place which shall be designated in its charter.

No foreign corporation, other than the National banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

SEC. 17. OFFICERS TO PERFORM DUTIES UNTIL SUCCESSOR IS QUALIFIED.—All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

SEC. 18. VESTED RIGHTS.—The rights of property and of action, which have been acquired under the Constitution and laws of the Republic and State, shall not be divested; nor shall any rights or actions which have been divested, barred, or declared null and void by the Constitution of the Republic and State, be re-invested, renewed, or re-instated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution, unless otherwise herein provided; and provided further, that no cause of action heretofore barred shall be revived.

SEC. 19. QUALIFICATIONS OF JURORS.—The Legislature shall prescribe by law the qualifiation of grand and petit jurors.

SEC. 20. (a). The manufacture, sale, barter or exchange in the State of Texas of spirituous, vinous or malt liquors or medicated

bitters capable of producing intoxication, or any other intoxicant whatever except vinous or malt liquors of not more than three and two-tenths per cent (3.2%) alcoholic content by weight (except for medicinal, mechanical, scientific or sacramental purposes) are each and all hereby prohibited. The Legislature shall enact laws to enforce this Section, and may from time to time prescribe regulations and limitations relative to the manufacture, sale, barter, exchange or possession for sale of vinous or malt liquors of not more than there and two-tenths per cent (3.2%) alcoholic content by weight; provided the Legislature shall enact a law or laws whereby the qualified voters of any county, justice's precinct, town or city may, by a majority vote of those voting, determine from time to time whether the sale for beverage purposes of vinous or malt liquors containing not more than three and two-tenths per cent (3.2%) alcohol by weight shall be prohibited within the prescribed limits; and provided further that in all counties in the State of Texas and in all political subdivisions thereof, wherein the sale of intoxicating liquors had been prohibited by local option elections held under the laws of the State of Texas and in force at the time of the taking effect of Section 20, Article 16, of the Constitution of Texas, it shall continue to be unlawful to manufacture, sell, barter or exchange in any such county or in any such political subdivision thereof, any spirituous, vinous or malt liquors or medicated bitters, capable of producing intoxication or any other intoxicant whatsoever, unless and until a majority of the qualified voters in said county or political subdivision thereof voting in an election held for such purpose shall determine it to be lawful to manufacture, sell, barter and exchange in said county or political subdivision thereof vinous or malt liquors containing not more than three and two-tenths per cent (3.2%) alcoholic content by weight, and the provision of this subsection shall be self enacting.

(b) Until the Legislature shall prescribe other or different regulations on the subject, the sale of spirituous, vinous or malt liquors, or medicated bitters, capable of producing intoxication, or any other intoxicant whatever, for medicinal purposes shall be made only in cases of actual sickness and then only upon the prescription of a regular practicing physician, subject to the regulations applicable to sales under prescriptions in prohibited territory by virtue of Article 598, Chapter 7, Title 11, of the Penal Code of the State of Texas.

(c) This amendment is self-operative and until the Legislature shall prescribe other or different penalties, any person acting for himself or in behalf of another, or in behalf of any partnership, corporation or association of persons, who shall, after the adoption of this amendment violate any part of this Constitutional provision, shall be deemed guilty of a felony, and shall, upon conviction in a prosecution commenced, carried on and concluded in the manner prescribed by law in cases of felonies, be punished by confinement in the penitentiary for a period of time not less than one year nor more than five years, without the benefit of any law providing for suspended sentence. And the district courts and judges thereof, under their equity powers, shall have the authority to issue, upon suit of the Attorney General, injunctions against infractions or threatened infractions of any part of this constitutional provision.

(d) Without affecting the provisions herein, intoxicating liquors are declared to be subject to the general police power of the State; and the Legislature shall have the power to pass any additional prohibitory laws, or laws in aid thereof, which it may deem advisable.

(e) Liability for violating any liquor laws in force at the time of the adoption of this amendment shall not be affected by this amendment, and all remedies, civil and criminal, for such violations shall be preserved.

SEC. 21. STATIONERY; PUBLIC PRINTING.—All stationery and printing, except proclamations and such printing as may be done at the Deaf and Dumb Asylum, paper, and fuel used in the Legislative and other departments of the government, except the Judicial Department, shall be furnished, and the printing and binding of the laws, journals and department reports, and all other printing and binding and the repairing and furnishing the halls and rooms used for the meetings of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations, as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contract; and all such contracts shall be subject to the approval of the Governor, Secretary of State and Comptroller.

SEC. 22. FENCE LAWS.—The Legislature shall have the power to pass such fence laws, applicable to any sub-division of the State, or counties, as may be needed to meet the wants of the people.

Sec. 23. Stock Laws.—The Legislature may pass laws for the regulation of live stock and the protection of stock raisers in the stock raising portion of the State, and exempt from the operation of such laws other portions, sections, or counties; and shall have power to pass general and special laws for the inspection of cattle, stock and hides and for the regulation of brands; provided, that any local law thus passed shall be submitted to the freeholders of the section to be affected thereby, and approved by them, before it shall go into effect.

Sec. 24. Roads; Convict Labor.—The Legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures, and convict labor to all these purposes.

Sec. 25. Drawbacks and Rebates in Freight, Insurance, Transportation, Storage, Etc., Prohibited.—That all drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service of, or to any cotton, grain, or any other produce or article of commerce in this State, paid or allowed or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent, or middleman of any kind, not the true and absolute owner thereof, are forever prohibited, and it shall be the duty of the Legislature to pass effective laws punishing all persons in this State who pay, receive or contract for, or respecting the same.

Sec. 26. Homicide; Civil Action For.—Every person, corporation, or company, that may commit a homicide, through wilful act, or omission, or gross neglect, shall be responsible, in exemplary damages, to the surviving husband, widow, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.

Sec. 27. Vacancies in Offices for Unexpired Terms Only.—In all elections to fill vacancies of office in this State, it shall be to fill the unexpired term only.

Sec. 28. Wages Exempt From Garnishment.—No current wages for personal service shall ever be subject to garnishment.

Sec. 29. Barratry to Be Prohibited.—The Legislature shall provide by law for defining and punishing barratry.

SECTION 30. DURATION OF OFFICES; TERMS OF RAILROAD COMMISSIONER.—The duration of all offices not fixed by this Constitution shall never exceed two years; provided, that when a railroad commission is created by law it shall be composed of three Commissioners who shall be elected by the people at a general election for State officers, and their terms of office shall be six years; provided, railroad commissioners first elected after this amendment goes into effect shall hold office as follows: One shall serve two years, and one four years, and one six years; their terms to be decided by lot immediately after they shall have qualified. And one railroad commissioner shall be elected every two years thereafter. In case of vacancy in said office the Governor of the State shall fill said vacancy by appointment until the next general election.

SEC. 30a. BOARD OF REGENTS, TRUSTEES, MANAGERS, ETC.; TERM OF OFFICE.—The Legislature may provide by law that the members of the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may hold their respective offices for the term of six (6) years, one-third of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law," and the Legislature shall enact suitable laws to give effect to this Section.

SEC. 31. QUALIFICATIONS OF PHYSICIANS TO BE PRESCRIBED.—The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

SEC. 32. BOARD OF HEALTH AND VITAL STATISTICS.—The Legislature may provide by law for the establishment of a Board of Health and Vital Statistics, under such rules and regulations as it may deem proper.

SECTION 33. The Accounting Officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. Provided, that this restriction as to the draw-

ing and paying of warrants upon the Treasury shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States nor to retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers and retired enlisted men of the United States Army, Navy, and Marine Corps.

Sec. 34. How Forts May Be Acquired by the United States.—The Legislature shall pass laws authorizing the Governor to lease, or sell to the government of the United States, a sufficient quantity of the public domain of the State necessary for the erection of forts, barracks, arsenals, and military stations, or camps, and for other needful military purposes; and the action of the Governor therein shall be subject to the approval of the Legislature.

Sec. 35. Laborers on Public Works to Be Protected.—The Legislature shall, at its first session pass laws to protect laborers on public buildings, streets, roads, railroads, canals, and other similar public works, against the failure of contractors, and sub-contractors to pay their current wages when due, and to make the corporation, company or individual for whose benefit the work is done responsible for their ultimate payment.

Sec. 36. Payment of School Teachers Provided For.—The Legislature shall, at its first session, provide for the payment, or funding, as they may deem best, of the amounts found to be justly due to the teachers in the public schools, by the State, for service rendered prior to the first day of July 1873 and for the payment by the school districts in the State of amounts justly due teachers of public schools by such district to January 1876.

Sec. 37. Mechanic's Liens to Be Enforced.—Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Sec. 38. Commissioner of Insurance, Statistics and History.—The Legislature may, at such time as the public interest may require, provide for the office of Commissioner of Insurance,

Statistics and History, whose term of office duties and salary shall be prescribed by law.

Sec. 39. Memorials of Texas History.—The Legislature may, from time to time, make appropriations for preserving and perpetuating memorials of the history of Texas, by means of monuments, statues, paintings and documents of historical value.

Section 40. No person shall hold or exercise, at the same time, more than one Civil Office of emolument, except that of Justice of Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States; or retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, from holding in conjunction with such office any other office or position of honor, trust or profit, under this State or the United States, or from voting at any Election; General, Special or Primary, in this State when otherwise qualified.

Sec. 41. Bribery of Certain Officials to Be Prohibited.—Any person who shall, directly or indirectly, offer, give, or promise, any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law. And any member of the Legislature or Executive or Judicial Officer who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself, or for another, from any company, corporation or person, any money, appointment, employment, testimonial, reward, thing of value or employment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or

with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand and receive any such money or other advantage matter or thing aforesaid for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, within the meaning of the Constitution, and shall incur the disabilities provided for said offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.

SEC. 42. LEGISLATURE MAY PROVIDE FOR INEBRIATE ASYLUM.—The Legislature may establish an inebriate Asylum, for the cure of drunkenness and reform of inebriates.

SEC. 43. NO EXEMPTIONS FROM PUBLIC SERVICE.—No man, or set of men, shall ever be exempted, relieved or discharged, from the performance of any public duty or service imposed by general law, by any special law. Exemptions from the performance of such public duty or service shall only be made by general law.

SEC. 44. COUNTY TREASURER AND SURVEYOR.—The Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this State of a county treasurer and a county surveyor, who shall have an office at the county seat, and hold their office for two years, and until their successors are qualified; and shall have such compensation as may be provided by law.

SEC. 45. RECORDS OF THE HISTORY OF TEXAS.—It shall be the duty of the Legislature to provide for collecting, arranging and safely keeping such records, rolls, correspondence, and other documents, civil and military, relating to the history of Texas, as may be now in the possession of parties willing to confide them to the care and preservation of the State.

SEC. 46. MILITIA TO BE ORGANIZED.—The Legislature shall provide by law for organizing and disciplining the militia of the State, in such manner as they shall deem expedient, not incompatible with the Constitution and Laws of the United States.

SEC. 47. SCRUPLES AGAINST BEARING ARMS.—Any person who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

SEC. 48. LAWS TO REMAIN IN FORCE.—All laws and parts of laws now in force in the State of Texas, which are not repugnant

to the Constitution of the United States, or to this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the Legislature.

SEC. 49. EXEMPTIONS FROM FORCED SALES.—The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

SEC. 50. HOMESTEAD EXEMPTIONS; INCUMBRANCES; PRETENDED SALES.—The homestead of a family shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as is required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the husband alone, or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void.

SEC. 51. HOMESTEAD DEFINED.—The homsetead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot, or lots, not to exceed in value five thousand dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of the family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

SEC. 52. DESCENT OF HOMESTEAD.—On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be gov-

erned by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

SEC. 53. DECLARATION VALIDATING PROCESS AND WRITS.—That no inconvenience may arise from the adoption of this Constitution, it is declared that all process and writs of all kinds which have been or may be issued and not returned or executed when this Constitution is adopted, shall remain valid, and shall not be, in any way, affected by the adoption of this Constitution.

SEC. 54. INDIGENT LUNATICS.—It shall be the duty of the Legislature to provide for the custody and maintenance of indigent lunatics, at the expense of the State, under such regulations and restrictions as the Legislature may prescribe.

SEC. 55. PENSIONS.—The Legislature may provide annual pensions, not to exceed one hundred and fifty dollars per annum, to surviving soldiers or volunteers in the war between Texas and Mexico, from the commencement of the Revolution in 1835, until the first of January, 1837; and also to the surviving signers of the Declaration of Independence of Texas, and to the surviving widows continuing unmarried of such soldiers and signers; provided, that, no such pension be granted except to those in indigent circumstances, proof of which shall be made before the County Court of the county where the applicant resides, in such manner as may be provided by law.

SEC. 56. NO APPROPRIATION FOR IMMIGRATION.—The Legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a Bureau of Immigation, or for any purpose of bringing immigrants to this State.

SEC. 57. LAND SET ASIDE FOR STATE CAPITOL.—Three millions acres of the public domain are hereby appropriated and set apart for the purpose of erecting a new State Capitol and other necessary public building at the seat of government, said lands to be sold under the direction of the Legislature; and the Legislature shall pass suitable laws to carry this section into effect.

SEC. 58. The Legislature shall have full power and authority to provide by law for the management and control of the Prison System of Texas; and to this end shall have power and authority to place the Prison System under the supervision, management and control of such trained and experienced officer, or officers, as the Legislature may from time to time provide for by law.

SECTION 59. a— The conservation and development of all the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its over-flowed lands, and other lands needing drainage, the conservation and development of its roeste, water and hydroelectric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as amy be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition

shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted.

SECTION 60. That the Constitution of the State of Texas be so amended as to authorize a Texas Centennial, commemorating the heroic period of early Texas history, and celebrating a century of our independence and progress, to be held at such times, places and in such manner as may be designated by the Legislature of Texas.

That the Legislature of Texas be authorized to make appropriation for the support and maintenance thereof; provided, that this authorization shall not be construed to make appropriations for any other future exposition or celebration of any kind or character.

## ARTICLE XVII.

### MODE OF AMENDING THE CONSTITUTION OF THIS STATE.

SEC. 1. HOW THE CONSTITUTION IS TO BE AMENDED.—The Legislature, at any biennial session, by a vote of two-thirds of all the members elected to each House, to be entered by yeas and nays on the journals, may propose amendments to the Constitution, to be voted upon by the qualified electors for members of the Legislature, which proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the Legislature, in one weekly newspaper of each county, in which such a newspaper may be published; and it shall be the duty of the several returning officers of said election, to open a poll for, and make returns to the Secretary of State, of the number of legal votes cast at said election for and against said amendments; and if more than one be proposed, then the number of votes cast for and against each of them; and if it shall appear from said return, that a majority of the votes cast, have been cast in favor of any amendment, the said amendment so receiving a majority of the votes cast, shall become a part of this Constitution, and proclamation shall be made by the Governor thereof.

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